TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 51

DUPUY H. ANDERSON, ET AL., APPELLANTS,

vs.

WADE O. MARTIN, JR.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

FILED DECEMBER 21, 1962
PROBABLE JURISDICTION NOTED FEBRUARY 18, 1963

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 684

DUPUY H. ANDERSON, ET AL., APPELLANTS,

vs.

WADE O. MARTIN, JR.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

INDEX

RECORD PRESS, PRINTERS, NEW YORK, N. Y., APRIL 11, 1963

[fol. 1] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

DUPUY H. ANDERSON and ACIE J. BELTON, Complainants,

vs.

WADE O. MARTIN, JR., Defendant.

COMPLAINT—Filed June 8, 1962

To the Honorable, the Judges of the United States District Court, in and for the Eastern District of Louisiana, Baton Rouge Division:

The joint complaint of Dupuy H. Anderson and Acie J. Belton (hereinafter referred to as "Complainants"), with respect represents:

I

Jurisdiction

a) The jurisdiction of this Court is invoked pursuant to Title 28, United States Code, Section 1331, as this action arises under the Constitution and laws of the United States, to-wit: The First Amendment and Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Title 42, United States Code, Section 1981, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Ten Thousand and no/100 ($10,000.00) Dollars.

b) The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Section 1343(3) in that: This action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction

thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Fourteenth Amendment and the Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States [fol. 2] Code, Sections 1971a and 1981, providing that all citizens of the United States shall be entitled and allowed to vote without distinction of race and for the equal rights of citizens and of all persons within the jurisdiction of the United States.

II

Injunctive Relief

a) The jurisdiction of this Court is also invoked pursuant to Title 28, United States Code, Section 2281, this being an action for an Interlocutory and Permanent Injunction, restraining upon the grounds of unconstitutionality the enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature, of which, a duly certified photostat copy is hereto appended, filed herewith and, by reference thereto, made a part hereof the same as if herein written "in extenso."

b) Complainants allege and aver that said Act Number 538 of the 1960 Regular Session of Louisiana Legislature is unconstitutional, null, void, invalid and without legal force and effect, on its face, and in its entirety, for the following reasons, to-wit:

1) That said Act contravenes and violates freedom of speech guaranteed by the First Amendment to the Constitution of the United States and by Article 1, Section 3, of the Constitution of the State of Louisiana of 1921, in that, said Act under its terms and provisions makes it mandatory that your complainants disclose their racial identity, specifically, as a Negro, in order to qualify as a candidate for public office in the election to be held in the Parish of East Baton Rouge, State of Louisiana on Saturday, July 28, 1962.

2) That said Act contravenes and violates the due process and equal protection clauses of the Fourteenth

Amendment to the Constitution of the United States and Title 42, United States Code, Sections 1981 and 1983, in that your complainants under the provisions of said Act will be, on said election day, denied basic rights and privileges and deprived of equal protection of the laws which citizens, particularly, candidates of other racial identities bidding for the same public offices, School Board Members of East Baton Rouge Parish School Board from Wards One and Two of said Parish (four (4) year term), will be privileged to enjoy and exercise.

3) The enforcement of said Act will result in many unreasonable limitations and many unnecessary restrictions the lack of which are impractical and are not customary of candidates seeking election to public offices, nor of their friend and supporters, all as will be shown on the trial of this cause.

[fol. 3]

III

Temporary Restraining Order

This is an action for a Temporary Restraining Order, authorized by Rule 65 of the Federal Rules of Civil Procedure. That immediate and irreparable injury, loss or damage will result to applicants and/or complainants before notice can be served and a hearing had thereon.

IV

Particular Averments

a) Complainant, Dupuy H. Anderson, is a citizen of the United States of America and a citizen and resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, and is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward One (1) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held in the Parish of East Baton Rouge, State of Louisiana, on Saturday, July 28, 1962; and

that, the complainant, Acie J. Belton, is a citizen of the United States of America and a citizen and resident of lawful age of the Parish of East Baton Rouge, State of Louisiana, and is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held in the Parish of East Baton Rouge, State of Louisiana, on Saturday, July 28, 1962.

b) That complainants are members of the Negro race bringing this action on their own behalf and on behalf of all other Negroes similarly situated with respect to the matter here involved, they being so numerous as to make it impractical to bring them all before the Court and there being common questions of law and fact. A common relief being sought, complainants present this action as a class action pursuant to Rule 23(a) of the Federal Rules of Civil Procedure. Complainants adequately represent the interests of the class.

[fol. 4] c) That Wade O. Martin, Jr. is a citizen of the United States of America and is the duly elected Secretary of State of the State of Louisiana, and who, by the provisions and terms of said Act, is expressly charged with the enforcement of same.

d) This is a proceeding pursuant to Title 28, United States Code, Sections 2201 and 2202 for a Declaratory Judgment, declaring the rights and other legal relations of claimants and other Negroes similarly situated in the subject matter in controversy between the parties, to-wit:

> Whether Act Number 538 of the 1960 Regular Session of the Louisiana Legislature violates the rights, privileges and immunities of complainants, and other Negroes similarly situated, as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971(a) and 1981 to seek and obtain public offices free from state imposed

racial distinctions and discriminations and to vote free from abridgements, denials and distinctions imposed by the State?

e) Complainants allege and aver that the operation and enforcement and the continued operation and enforcement of said Act Number 538, invades, denies, and abridges their rights, privileges and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden in the exercise of their rights and privileges to seek and obtain public offices based solely on race; that said Act by its purpose and effect places the power and prestige of the State behind distinctions based solely on race and that said Act by its purpose and effect abridges the right to vote of complainants and their supporters.

f) Complainants allege and aver that by virtue of the operation and/or enforcement of Act Number 538 of the 1960 Regular Session of the Louisiana Legislature complainants will suffer immediate and irreparable harm, injury, loss and damage, unless this Court enjoin and restrain the defendant, Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from enforcing said Act Number 538, which requires that every application, notification or declaration of candidacy, and every certificate of nom- [fol. 5] ination and nomination paper pertaining to complainants specify their race; and complainants, on information and belief, further allege that on the ballots to be used in the election to be held on Saturday, July 28, 1962, complainants' race, which is the Negro race, will be printed within parentheses beside complainants' names.

Wherefore, complainants pray

1) That defendant, Wade O. Martin, Jr., be duly served and cited in the manner prescribed by law.

2) That a notice of a hearing of this matter be served on the proper State officers as provided by Title 28, United States Code, Section 2284(2).

3) That the Court convene a Three-Judge Court as provided by Title 28, United States Code, Section 2284.

4) That the Court advance the complaint on the Docket and order a Speedy hearing thereof according to law and upon such hearing the Court enter a Preliminary and Permanent Injunction to enjoin and restrain the defendant, Wade O. Martin, Jr., Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from enforcing Act Number 538 of the 1960 Regular Session of the Louisiana Legislature on the grounds that said Act is unconstitutional, null, void, invalid and without legal force and effect in that said Act is in violation of the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and Title 42, United States Code, Sections 1971(a) and 1981.

5) That the Court adjudge, decree and declare the right and legal relations of the parties to the subject matter hereof to be in controversy and that such declaration shall have the force and effect of a final judgment or decree and that the Court adjudge, decree and declare that Act Number 538 of the 1960 Regular Session of the Louisiana Legislature is unconstitutional, null and void and invalid as in violation of the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

6) That a Temporary Restraining Order issue herein prohibiting and restricting the defendant, Secretary of State of the State of Louisiana, his subordinates, agents and/or employees and his successors and assigns from en- [fol. 6] forcing Act Number 538 of the 1960 Regular Session of Louisiana Legislature on the grounds that immediate and irreparable injury, loss or damage will result to complainants before notice hereof can be served and a hearing had hereon.

7) That the Court allow complainants their costs and that complainants have such other and further relief as may appear just and proper in the premises.

Attorneys for Complainants: Johnnie A. Jones, Murphy W. Bell, Bruce A. Bell, 971 South 13th Street, Baton Rouge, Louisiana; Leonard P.

Avery, Samuel Dickens, 8152 Scenic Highway, Baton Rouge 7, Louisiana; Wilmon L. Richardson, 1091 Swan Street, Baton Rouge 7, Louisiana; By: Johnnie A. Jones.

Of Counsel: Jack Greenberg, James M. Nabrit, III, Michael Meltsner, 10 Columbus Circle, New York 19, New York.

[fol. 7] State of Louisiana
Parish of East Baton Rouge

AFFIDAVIT OF ACIE J. BELTON

Before Me, the undersigned authority, this day personally came and appeared: Acie J. Belton, who, after being first duly sworn, did depose and say:

That he is one of the complainants in the above and foregoing complaint; that he is a citizen of the United States and of the State of Louisiana; and that he is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, in the Parish of East Baton Rouge, State of Louisiana; and that Dupuy H. Anderson, the other named complainant in the above and foregoing complaint, is a citizen of the United States and of the State of Louisiana, and that, he is a duly qualified candidate for the Democratic Nomination to the office of School Board Member of East Baton Rouge Parish School Board, State of Louisiana, for the four (4) year term from Ward One (1) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, in the Parish of East Baton Rouge, State of Louisiana; that he has read the above and foregoing complaint and that all of the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief; and that unless the

relief is granted as prayed for in the foregoing complaint the complainants named therein and the class they represent will suffer, on election day, come Saturday, July 28, 1962, immediate and irreparable harm, injury, loss and damage under and by virtue of the operation and/or enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature.

Acie J. Belton

Sworn To and Subscribed before me this 7th day of June, 1962.

Johnnie A. Jones, Notary Public.

[fol. 8] Certificate of Service (omitted in printing).

[fol. 9]

ATTACHMENT TO COMPLAINT

[Letterhead of State of Louisiana]

WADE O. MARTIN, JR.

I, the Undersigned Secretary of State, of the State of Louisiana, Do Hereby Certify That the annexed and attached three pages are true and correct photostat copies of Act No. 538 of the 1960 Regular Session of Louisiana Legislature, as shown by comparison with the original document on file in the archives of this office.

Given under my signature, authenticated with the impress of my Seal of office, at the City of Baton Rouge, this, 1st day of February A.D. 1961.

Wade O. Martin, Jr., Secretary of State.

[fol. 10]

House Bill No. 1061 By: Messrs. Garrett, DuPont, Stinson, Napper, Schoenberger, and Senators Gravolet, Patton, Jones, Carpenter, Adcock, and Long

AN ACT

To Amend Title 18 of the Louisiana Revised Statutes of 1950 by Adding Thereto a New Section to Be Designated as R.S. 18:1174.1, to Provide for the Designation of the Race of Each Candidate for Public Office on Applications for, Notifications or Declarations of, Candidacy, and on Certificates of Nomination, Nomination Papers, Certifications of Names of Candidates Made to the Secretary of State, and on Ballots.

ORIGINATED

ACT 538

IN THE

HOUSE OF REPRESENTATIVES

[Signature Illegible], Clerk of the House of Representatives.

Received by Secretary of State this 14th day of July, 1960.

Wade O. Martin, Jr., Secretary of State.

Rec'd by the Governor—July 5, 1960 at 1:30 P.M.

D. Andries

[fol. 11]

House Bill No. 1061 By: Messrs. Garrett, DuPont, Stinson, Napper, Schoenberger, and Senators Gravolet, Patton, Jones, Carpenter, Adcock, and Long

AN ACT

To Amend Title 18 of the Louisiana Revised Statutes of 1950 by Adding Thereto a New Section to Be Designated as R.S. 18:1174.1, to Provide for the Designation of the Race of Each Candidate for Public Office on Applications for, Notifications or Declarations of, Candidacy, and on Certificates of Nomination, Nomination Papers, Certifications of Names of Candidates Made to the Secretary of State, and on Ballots.

Be It Enacted by the Legislature of Louisiana:

Section 1. Section 1174.1 of Title 18 of the Louisiana Revised Statutes of 1950 is hereby enacted to read as follows:

Section 1174.1. Designation of race of candidates on paper and ballots

A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein, whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairman of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications

or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which informa-
[fol. 12] tion shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

[Signature Illegible], Speaker of the House of Representatives.

[Signature Illegible], Lieutenant Governor and President of the Senate.

Jimmie H. Davis, Governor of the State of Louisiana.

Approved: July 9, 1960

[fol. 13] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION FOR TEMPORARY RESTRAINING ORDER
—Filed June 8, 1962, and Denial Thereof, June 11, 1962

The plaintiffs move this Honorable Court for the issuance of a Temporary Restraining Order, without notice, temporarily restraining the defendant, Wade O. Martin,

Jr., Secretary of State of the State of Louisiana, his subordinates, agents, servants and/or employees and his successors and assigns from enforcing the terms and provisions of Act Number 538 of the 1960 Regular Session of Louisiana Legislature, in the Primary Election to be held in East Baton Rouge Parish, State of Louisiana, on Saturday, July 28, 1962.

As appearers [sic] from the verified complaint, defendant will, unless restrained by order of this Court, cause immediate and irreparable injury, loss and damage to the plaintiffs, for which plaintiffs have no adequate remedy at law, before notice can be served and a hearing had thereon.

Attorneys for Plaintiffs: By: Johnnie A. Jones.

Motion for issuance of Temporary Restraining Order Denied—June 11, 1962—New Orleans, La.—E. Gordon West, U. S. District Judge.

[fol. 14]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

PROPOSED TEMPORARY RESTRAINING ORDER

Whereas, in the above-named cause it has been made to appear by the verified complaint filed herein, which was on this ..... day of June, 1962, presented to the Honorable E. Gordon West, Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a Preliminary Injunction should issue, without notice, because immediate and irreparable injury, loss and/or damage will result to the plaintiffs before notice can be served and a hearing had thereon, in that the plaintiffs are members of the Negro race and are duly qualified candidates for the Demo-

cratic Nomination to the offices of School Board Members of East Baton Rouge Parish School Board from Wards One (1) and Two (2) of East Baton Rouge Parish, State of Louisiana, in the Democratic Primary Election to be held on Saturday, July 28, 1962, and that, the operation and enforcement and the continued operation and enforcement of Act Number 538 of the 1960 Regular Session of Louisiana Legislature invades, denies and abridges plaintiffs' rights, privileges and immunities as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States and secured by Title 42, United States Code, Sections 1971a and 1981 in that the purpose and effect of said Act, thus, the enforcement of same, impose a disability and burden on plaintiffs in the exercise of their rights and privileges to seek and obtain pubic offices based solely on race; that said Act by its [fol. 15] purpose and effect, and finally, its enforcement, abridges the right to vote of plaintiffs and their supporters.

Notice and a hearing before entering a Temporary Restraining Order should not be required because the enforcement of said Act imposes a disability and burden on plaintiffs in the exercise of their rights and privileges to seek and obtain public offices based solely on race; that said Act places the power and prestige of the State behind distinctions based solely on race and that the enforcement of said Act abridges the right to vote of plaintiffs and their supporters.

Now Therefore, on motion of the plaintiffs

It Is Ordered that the defendant, Wade O. Martin, Jr., Secretary of State of the State of Louisiana, his subordinates, agents, servants and/or employees, and his successors and assigns, who receive actual notice of this order by personal service or otherwise, be, and they are hereby enjoined from enforcing Act Number 538 of the 1960 Regular Session of the Louisiana Legislature and all regulations thereunder until a full hearing and determination of the subject matter is had by the full Court of Three Judges.

This Temporary Restraint is on the condition that a bond be filed by the complainants herein in the sum of .... ($) Dollars, conditioned that complainants will pay to the parties enjoined such damages as they may sustain by reason of said Temporary Restraining, if the Court finally decides that plaintiffs were not entitled thereto.

Issued at Baton Rouge, Louisiana, this ..... day of June, 1962, at the hour of ..... o'clock .....M.

..... District Judge.

[fol. 16]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

NOTICE OF MOTION FOR PRELIMINARY INJUNCTION

To: The Honorable Wade O. Martin, Jr., Secretary of State of the State of Louisiana

Please take notice that the undersigned will bring the attached Motion for a Preliminary Injunction on for hearing before the United States District Court (Baton Rouge Division) for the Eastern District of Louisiana, United States Courthouse, Baton Rouge, Louisiana, at ..... o'clock A. M. on the ..... day of ....., 1962, or as soon thereafter as counsel can be heard.

Attorneys for Complainants: By: Johnnie A. Jones.

[fol. 17]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

West, J.: Division "C"

No. 2623

Civil Action—BRD

[Title omitted]

MINUTE ENTRY OF ORDER DENYING MOTION FOR ISSUANCE OF TEMPORARY RESTRAINING ORDER—June 11, 1962

It Is Ordered by the Court that the motion of Petitioners for issuance of temporary restraining order be, and the same is hereby, Denied.

EGW

Johnnie A. Jones, Esq.,
Wade O. Martin, Jr., Esq.,
Jack P. F. Gremillion, Esq.,

6/11/62—Copies Mailed—NBJ.

[fol. 18]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

June 13, 1962

Honorable Richard P. Rives
United States Court of Appeals
Fifth Circuit
Post Office Box 1070
Montgomery 2, Alabama

In Re: Dupuy H. Anderson and Acie J. Belton, Complainants v. Wade O. Martin, Jr., Defendant
Civil Action No. 2623, United States District Court
Eastern District of Louisiana, Baton Rouge Division

Dear Judge Rives:

In connection with our telephone conversation of yesterday, I am enclosing herewith a complete copy of the complaint filed in the above captioned matter.

Complainants have prayed for the convening of a three judge court to consider this matter. Since, to my knowledge, this precise question has not heretofore been passed upon, it is my considered opinion that this complaint presents a substantial constitutional question.

I would, therefore, request that a three judge court be constituted to hear this matter.

Since I have refused to issue a temporary restraining order, I would respectfully suggest that the three judge court be appointed as soon as possible so that an early hearing date may be afforded complainants. By telephone you tentatively appointed Judge Wisdom and Judge

Ellis to serve with me, but I understand that these appointments are subject to your future confirmation.

With kindest personal regards, I remain,

Sincerely,

E. Gordon West, United States District Judge.

Encl.

[fol. 19] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

ORDER DESIGNATING THREE-JUDGE COURT—June 14, 1962

Whereas Honorable Elbert P. Tuttle, Chief Judge of the United States Court of Appeals for the Fifth Circuit is outside of the Circuit and temporarily unable to perform his duties as Chief Judge; and whereas the undersigned is a Circuit Judge in active service, present in the Circuit, under 70 years of age, next in precedence, and able and qualified to act as Chief Judge pursuant to Title 28, United States Code, Section 45(d); and whereas, in my judgment, the public interest so requires; and

The Honorable E. Gordon West, United States District Judge for the Eastern District of Louisiana, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Richard T. Rives, as Acting Chief Judge of the Fifth Circuit, hereby designate the Honorable John Minor Wisdom, United States Circuit Judge, and the Honorable Frank B. Ellis, United States District Judge for the East-

ern District of Louisiana, to serve with Judge West as members of, and with him to constitute the court to hear and determine the action.

Witness My Hand this 14th day of June, 1962.

Richard T. Rives, Acting Chief Judge.

(Injunctions—Three judge courts—designation, 28 U.S.C.A. Sec. 2284)

[fol. 20] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

ORDER SETTING HEARING—Filed June 15, 1962

On application of complainants:

It Is Ordered that a hearing on the plaintiffs' motion for the issuance of a preliminary injunction shall be held before the three judge Court empanelled in this matter at the Post Office Building, New Orleans, Louisiana, at 10:00 o'clock a. m. June 26, 1962.

E. Gordon West, United States District Judge.

[fol. 21]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

NOTARY PUBLIC PHONE 2-8573
JOHNNIE A. JONES
ATTORNEY AT LAW
530 SOUTH 13TH STREET
BATON ROUGE 3, LOUISIANA

[Stamp—U. S. District Court—Eastern District of Louisiana—Filed—June 18, 1962—A. Dallam O'Brien, Jr., Clerk.]

June 18, 1962

Hon. C. H. Banta, Clerk
U. S. District Court
Eastern District of Louisiana
Baton Rouge Division
Baton Rouge, Louisiana

Re: Civil Action No. 2623
Dupuy H. Anderson, et al.
vs.
Wade O. Martin, Jr.

Dear Sir:

The plaintiffs in the captioned premises request that subpoenas issue to the following named witnesses to appear and testify in the hearing to be had in the captioned cause on Tuesday, June 26, 1962 at the hour of 10:00 o'clock A.M. in the Courthouse located in the Post Office Building at New Orleans, Louisiana. The names and addresses of the witnesses, to-wit:

1. Acie J. Belton
   1763 Rosenwald Road
   Baton Rouge 7, Louisiana

2. Hon. Wade O. Martin, Jr.
Secretary of State of the State of Louisiana
State Capitol Building
Baton Rouge, Louisiana

3. Hon. Jodie Smith
Registrar of Voters
East Baton Rouge Parish
Parish Courthouse Building
Baton Rouge, Louisiana

[fol. 22]

4. Russell J. Dioron, Chairman
East Baton Rouge Parish Democratic Committee
620 Florida Street
Baton Rouge, Louisiana

Thanking you for your very kind and prompt cooperation, I am

Yours very truly,

Johnnie A. Jones

JAJ/mlj

[fol. 23]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

Wisdom, J.:
West, J.:
Ellis, J.:

[Title omitted]

MINUTE ENTRY OF ARGUMENT AND SUBMISSION
—June 26, 1962

This cause came on for hearing this day on Hearing on Plaintiff's motion for issuance of a preliminary injunction.

Present: Jack Greenberg, Esq.,
Johnnie A. Jones, Esq.,
Attorneys for Plaintiff

Harry Fuller, Esq.,
T. McFerrin, Esq.,
Attorneys for State of Louisiana

All present and ready.

Defendant files written motion to dismiss and response to complaint.

Argument.

Submitted.

[fol. 24]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

CA 2623

[Title omitted]

MINUTE ENTRY OF ORDER DENYING PRELIMINARY WRIT OF INJUNCTION—June 26, 1962

The motion to dismiss for lack of jurisdiction and of abatement is denied, whereupon, this cause came on to be heard under special assignment and pursuant to stipulation of counsel as to the evidentiary matters involved and the Court having considered the law and the stipulation, and the arguments of counsel,

It Is Ordered, that plaintiff's request for a preliminary writ of injunction be denied.

E. Gordon West, District Judge.

Frank B. Ellis, District Judge.

United States Circuit Judge
Dissenting

John Minor Wisdom

6/26/62
cc: Gremillion
Martin
Jones
Fuller
McFerrin

[fol. 25] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION TO DISMISS—Filed June 26, 1962

Now Into Court through undersigned counsel comes Wade O. Martin, Jr., appearing herein through Jack P. F. Gremillion, Attorney General of the State of Louisiana, and other undersigned counsel, and files this Motion to Dismiss on the following grounds, to-wit:

1. This Court does not have jurisdiction.

a) Plaintiffs allege jurisdiction under Title 28 U.S.C.A. 1331, in that the matter in controversy arises under the Constitution, laws or treaties of the United States and the amount in controversy exceeds Ten Thousand and no/100

($10,000.00) Dollars, exclusive of interest and costs. Respondent avers that plaintiffs' claim involves nothing in money value, and therefore this statute confers no jurisdiction of this Court. (St. Paul Mercury Indemnity Company vs. Red. Cab Company, 303 U. S. 283, 58 S. Ct. 586).

b) Complainants further invoke jurisdiction of this Court pursuant to Title 28, U.S.C.A., Section 1343(3) because of the provisions of Title 42, U.S.C.A., Sections 1971 (a) and 1981. 42 U.S.C.A. 1971(a) provides that all persons otherwise qualified by law shall be allowed to vote at any election without distinction of race, color or previous [fol. 26] servitude. This Section does not confer jurisdiction upon the Court in this instance because no person is being denied the right to vote because of color, race or previous servitude.

42 U.S.C.A. 1981 provides that all persons shall have equal rights under the law, and shall suffer equal penalties, pain, punishment and the like under the law. Act 538 of 1960 is expressly designed to apply to everyone equally, and therefore confers no jurisdiction upon this Court on the grounds of racial discrimination. Jurisdiction must be expressly pleaded in the complaint, and alleged deprivations of constitutional rights must be affirmatively stated and set forth, which is not done in the complaint filed in this matter. (South Covington and C. St. Railway Co. vs. City of Newport, 42 Sup. Ct. 418, 259 U. S. 97).

2. A Three Judge Court does not have jurisdiction to hear this cause. A sufficient Federal Constitutional question is necessary to invoke the jurisdiction of a Three Judge District Court, and the existence of this question must be determined by the allegations of the complaint. (Shuttlesworth vs. Birmingham Board of Education of Jefferson County, 162 Fed. Sup. 372, affirmed 79 Sup. Ct. 221; Webb vs. State University of New York, 120 Fed. Sup. 554). A sufficient Federal question does not exist merely by complainants' allegations in an action to enjoin enforcement of a state statute that a section of such a statute is unconstitutional. (Patterson vs. Hardon, 145 Fed. Sup. 299).

3. A Three Judge Court is without authority to issue an injunction as prayed for in this matter. When a Federal Court is asked to interfere with enforcement of state statutes, it should only do so to *prevent irrevocable injury which is clear, imminent and substantial.* (Piccoli vs. Board of Trustees and Warden of State Prison, 87 Fed. Sup. [fol. 27] 672). An injunction should not issue against a State officer clothed with the authority to enforce a law unless in a case reasonably free from doubt and when necessary to prevent *clear and irrevocable injury.* (Pearl Assurance Co., Limited of London, England vs. Harrington, 38 Fed. Sup. 411, affirmed 61 Sup. Ct. 1120).

4. Plea of Abatement

The pendency of a representative suit is grounds for the abatement of a subsequent similar suit in the same jurisdiction, although the second complainant is not a party to the prior suit. (Gamble vs. San Diego, 79 Fed. 487). Therefore this action should be abated due to the existence of a suit entitled Bruce A. Bell vs. Wade O. Martin, Jr., presently pending in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 2432 on the Docket, copies of which suit and defendant's answer thereto are annexed hereto and made part hereof.

5. The complaint fails to state a claim against defendant upon which relief can be granted.

Wherefore, mover prays that this complaint be dismissed at complainants' cost.

By Attorneys: Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

[fol. 28] Certificate of service (omitted in printing).

[fol. 29] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

RESPONSE—Filed July 2, 1962

Now Into Court, through Jack P. F. Gremillion and other undersigned counsel comes Wade O. Martin, Jr., Secretary of State, State of Louisiana, and files this his Response in the above captioned matter, reserving all rights in regard to his Motion previously filed herein, denying each and every allegation contained in the complaint except those hereinafter expressly admitted, and with respect shows that:

I.

Defendant denies the allegations contained in Article I of complainants' petition.

II.

Defendant denies the allegations contained in Article II of complainants' petition.

III.

Defendant denies the allegations contained in Article III of complainants' petition.

IV.

Particular Averments

a) Defendant admits the allegations contained in Article IV, Section A of the complaint.

[fol. 30] b) Defendant denies the allegations contained in Article IV, Section B of the complaint.

c) Defendant admits the allegations contained in Article IV, Section C of the complaint.

d) Defendant denies the allegations contained in Article IV, Section D of the complaint.

e) Defendant denies the allegations contained in Article IV, Section E of the complaint.

f) Defendant denies the allegations contained in Article IV, Section F of the complaint.

Wherefore, defendant prays that complaint be dismissed at complainants' cost.

By Attorneys: Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

[fol. 31] Certificate of service (omitted in printing).

[fol. 32] [File endorsement omitted]

In United States District Court
For the Eastern District of Louisiana
Baton Rouge Division
Civil Action No. 2623

Dupuy H. Anderson and Acie J. Belton, Complainants,

vs.

Wade O. Martin, Jr., Defendant.

Attorneys for Complainants:

Johnnie A. Jones, Murphy W. Bell, Bruce A. Bell, Leonard P. Avery, Samuel Dickens, Wilmon L. Richardson; Of Counsel: Jack Greenberg, James M. Nabrit, III, Michael Meltsner.

Attorneys for Defendant:

Jack P. F. Gremillion, Attorney General, State of Louisiana; Carroll Buck, First Assistant Attorney General; Harry Fuller, Second Assistant Attorney General; Teddy W. Airhart, Jr., Assistant Attorney General; Thomas W. McFerrin, Special Counsel.

OPINION—June 29, 1962

Before John Minor Wisdom, Circuit Judge, and E. Gordon West and Frank B. Ellis, District Judges

WEST, E. GORDON, J.

In 1960 the Louisiana Legislature enacted legislation requiring the Secretary of State to place a racial designation over the name of every candidate on the ballot in the primary or general election.[1] Under the statute the candidate [fol. 33] must place his name and racial designation on his

[1] La. R. S. §1174.1, Act 538 of 1960

"§1174.1 Designation of race of candidates on paper and ballots

A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairmen of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-Section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

certificate of candidacy and the Secretary of State uses that information in preparing the ballot. The designation applies to all candidates. The Statute requires that the designation of "Caucasian", "Negro", or "other specified race" be placed on the ballot after the name of each candidate.

Plaintiffs are two negro candidates for the school board in East Baton Rouge Parish, State of Louisiana. They challenge the constitutionality of this statute under the First, Fourteenth and Fifteenth Amendments to the United States Constitution and request injunctive relief against the Secretary of State prior to the July 28, 1962, Democratic primary.

The District Judge denied a temporary restraining order and thereafter a three-judge court was convened pursuant to 28 U. S. C. A., § 2284. Defendant filed his answer together with a motion to dismiss for lack of jurisdiction in court on the day of the hearing. The court recessed to consider its jurisdiction and having concluded that it had jurisdiction,[2] the court reconvened to hear the merits. The [fol. 34] parties stipulated that the facts were as stated in plaintiffs' complaint; the case proceeded to argument, and was submitted.

At the outset it is important to grasp the fundamental relationships of the parties. Plaintiffs are candidates for office and the rights they advance arise out of that status. Secondly, the statute in question is a state statute and applies to all. While it requires the negro to have his race disclosed on the ballot, it requires the same of the Caucasian, Mongolian, and so on. The garden variety discrimination between white and negro is not involved. Moreover, the state adopts no "sophisticated" method of discrimination that might give us pause.[3] The sole question is whether the constitutional rights of a negro candidate are abridged when his race, like that of all other candidates, is disclosed on the ballot pursuant to state statute.

---

[2] Jurisdiction is properly invoked under 28 U. S. C. A. §§ 1331; 1343(3); and 42 U. S. C. A. §§ 1971a, 1981, 1983.

[3] See *Lane* v. *Wilson*, 307 U. S. 268.

Precisely which constitutional rights plaintiffs advance is somewhat difficult to determine. Certainly the Fifteenth Amendment gives plaintiffs no comfort! While the Fourteenth Amendment apparently protects rights broader than those originally conceived by its drafters due to the Equal Protection and Due Process clauses,[4] the Fifteenth Amendment is direct in its protection.[5] It is exclusively the right to vote, and nothing more, which, in terms, is protected. Surely the statute must be interpreted in such a way as to protect the fundamental power of the franchise in whatever context a State bent on discrimination seeks to cast it.[6] But at no time has the Supreme Court expanded the protection of the amendment beyond the franchise. Even with the recognition that the Fifteenth Amendment created af- [fol. 35] firmative rights,[7] the court has not gone beyond the protection of the voter per se. Likewise, *MacDonald* v. *Key*,[8] which is urged on us as controlling, recognized that the right to vote is not involved in a statute requiring racial designations on the ballot. Moreover the facts of the case do not suggest a restriction on voting rights. The unfathomable vagaries of the voter operate just as freely with this statute as without it. This statute merely contributes to a more informed electorate. In any event, plaintiffs do not validly assert a right under the Fifteenth Amendment.

There is a creeping tendency, when dealing with problems in the area of the First and Fourteenth Amendments,[9]

---

[4] *Brown* v. *Board of Education*, 347 U. S. 483; *Bolling* v. *Sharp*, 347 U. S. 497.

[5] U. S. Constitution Amend., XV.

Sec. 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude.

[6] *Terry* v. *Adams*, 345 U. S. 461; *United States* v. *Classic*, 313 U. S. 299.

[7] *Ex parte Yarborough*, 110 U. S. 651; *Gwinn* v. *United States*, 238 U. S. 347.

[8] 224 F. 2d 608 (10 Cir. 1955).

[9] So that the matter may not confuse the issue let it be noted that the First Amendment is wholly inapplicable to this case

to outlaw State statutes on the grounds of their lack of rightness or wisdom, while under the misapprehension that only their constitutionality is being tested. This the Supreme Court has told us, more than once, we may not do.[10] With due respect for our federalism, the court must examine the Constitution and the various lines of Supreme Court decisions and determine if the State action contravenes the Constitution. The examination must be liberal so as not to exalt form over substance; it must be circumspect so as to accord the states their just powers.[11] [fol. 36] Plaintiffs' reliance on the Fourteenth Amendment suggests two lines of Supreme Court cases which might control this action. The first of these is the right to anonymity defined in *N.A.A.C.P.* v. *Alabama*, 357 U. S. 449. This case, plus *Bates* v. *Little Rock*, 361 U. S. 516, and *Talley* v. *California*, 362 U. S. 60, expounded the proposition that a person exercising freedom of speech or association had a right to anonymity if disclosure entailed "the likelihood of a substantial restraint upon the exercise . . . of their right to freedom of association."[12] Justice Black in *Talley* v. *California*, supra at 65, explained that "the reason for these holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance."

---

dealing as it does with the powers of Congress. It is the rights enumerated in the First Amendment which are included within the Fourteenth Amendment upon which plaintiff relies. *Gitlow* v. *New York*, 268 U. S. 652.

[10] *Carpenter's Union* v. *Ritter's Cafe*, 315 U. S. 722.
Giboney v. *Empire Storage Co.*, 336 U. S. 490.
Teamsters Union v. *Hanke*, 339 U. S. 470; *Building Service Employees* v. *Gazzam*, 339 U. S. 532.

[11] "To maintain the balance of our federal system, insofar as it is committed to our care, demands at once zealous regard for the guarantees of the Bill of Rights and due recognition of the powers belonging to the states. Such an adjustment requires austere judgment, and a precise summary of the result may help to avoid misconstruction." *Milk Wagon Drivers* v. *Meadowmoor*, 312 U. S. 287, 297.

[12] *N.A.A.C.P.* v. *Alabama*, supra, at 462.

It may be assumed, for present purposes, that plaintiffs have a constitutional right to seek office.[13] However, no matter what the length and breadth of that right, there is no basis for saying that a candidate for office has a right to anonymity. The Court in *N.A.A.C.P.* v. *Alabama*, was of the opinion that the injury to a right subsequent to disclosure of identity precludes the right to identification. A political candidate does not lose his right to run for office by disclosure of his race. Further, it is safe to say that his race, like his name and political affiliation which also appear on the ballot,[14] will come out in the campaign. This court is not disposed to create a shield against the brightest light of public examination of candidates for public office.

The Court in *Bates, N.A.A.C.P.* v. *Alabama*, and *Talley*, recognized that the right to anonymity could be abridged [fol. 37] in certain instances. However, in those instances, the State bore the burden of showing an overriding interest in the public sufficient to justify the partial abridgement of the right.[15] In the case before us the right of anonymity on the ballot does not exist so far as this court can determine. Thus this court is not put to any balancing since no personal interests are placed in the scale opposite the State interest, whatever it may be. We conclude that the Louisiana statute does not violate the Fourteenth Amendment on that score.

The second line of cases which appears applicable are the "state action" cases having their matrix in *Shelly* v. *Kraemer*, 334 U. S. 1, and *Barrows* v. *Jackson*, 346 U. S. 249. It is insufficient to state that these cases are distinguishable because state action is clear in this case. These cases must be read for their meaning as well as their facts.

The first case is, of course, *MacDonald* v. *Key*, supra. While it does not fall precisely within the "state action" concept, it is the case closest on its facts and involves the

---

[13] See *MacDonald* v. *Key*, 10 Cir. 224 F.2d 608.

[14] La. R. S. 18:671.

[15] See also *Teamsters Union* v. *Hanke*, 339 U. S. 470, 474. *Teamsters Union* v. *Vogt, Inc.*, 354 U. S. 284.

equal protection clause. There the Tenth Circuit found that the requirement that only negroes have their race designated on the ballot violated the Fourteenth Amendment. Plaintiffs attempt to make more of this case than is in it. The Tenth Circuit did not require any intricate theory of constitutional deprivation to strike down the Oklahoma Statute. Negro candidates were treated different from all other candidates without good reason being shown. Given those facts the Court need not have gone further, and it did not. This is not the case before us. Here all candidates must state their race and have it printed on the ballot. Plaintiffs must look further to find unconstitutionality.

Plaintiffs would have us find in *Shelly* v. *Kraemer* and its progeny some principle which would deter a state from placing racial classifications on the ballot. A brief synopsis [fol. 38] of the principle of these cases is in order. The Supreme Court, in the first instance, recognized that discrimination by private individuals was beyond the scope of the Fourteenth Amendment under the *Civil Rights Cases*.[16] To this was added the undeniable proposition that discrimination by the states was improper under the Fourteenth Amendment. Further the Court held that ostensibly private discrimination which was in fact enforced by the state was discriminatory "state action" under the Fourteenth Amendment.[17] The crucial fact in all these cases, insofar as the instant case is concerned, is that there existed a prior act of actually proven discrimination to which the state was privy. Either the private individual was seeking to exclude negroes from a neighborhood,[18] or denying negroes the right to vote,[19] or segregating buses,[20]

---

[16] 109 U. S. 3. See *Shelly* v. *Kraemer*, 334 U. S. 1, 13.

[17] *Shelly* v. *Kraemer*, supra; *Barrows* v. *Jackson*, 346 U. S. 249; *Terry* v. *Adams*, 345 U. S. 461; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715.

[18] *Shelly* v. *Kraemer*, supra; *Barrows* v. *Jackson*, supra.

[19] *Terry* v. *Adams*, supra.

[20] *Boman* v. *Birmingham Transit Company*, 5 Cir. 280 F. 2d 531.

train terminals,[21] restaurants,[22] or golf courses.[23] In those cases the state sought either to enforce the discrimination[24] or permit it within the public domain.[25] Since the Louisiana statute does not discriminate on its face, the Court must ask where the proven discrimination lies. Plaintiffs offer no proof of actual discrimination against them.[26] They ask [fol. 39] the court to take notice that discrimination among the electorate will somehow occur as a result of this statute.[27] Precisely how this discrimination against plaintiffs can be discovered is not made clear, much less how the state controls the discrimination through this statute. Nothing that we can find in the state action cases suggests that a court may take a state statute, and gaze into the future, seeking some gossamer possibility of discrimination in a group of individuals wholly beyond the control of the state. The discrimination must be real and the state must effect it. On this record we find a nondiscriminatory statute and nothing more. Judicial notice of a state policy of segregation avails us nothing unless actual discrimination is proven as a result of that policy through the medium of

---

[21] *Baldwin* v. *Morgan*, 5 Cir. 287 F. 2d 750.

[22] *Burton* v. *Wilmington Parking Authority*, supra.

[23] *Hampton* v. *City of Jacksonville*, 5 Cir. No. 19298 May 17, 1962.

[24] *Shelly* v. *Kraemer*, supra; *Boman* v. *Birmingham Transit Co.*, supra.

[25] *Burton* v. *Wilmington Parking Authority*, supra.

[26] A classification in a statute having some reasonable basis does not offend against the equal protection clause of the Constitution even though in practice it results in some inequality. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Morey* v. *Doud*, 354 U. S. 457.

[27] Plaintiffs' reliance on *Hall* v. *St. Helena Parish School Board*, E. D. La. 197 F. Supp. 649, is unavailing since in that case the court was able to determine purpose from concrete results, or at the very least easily predictable consequences. Plaintiffs do not refer this court to any resulting discrimination and do not even hint at predictable results.

this statute. We have previously found that the state treats all candidates alike.

For the foregoing reasons we conclude that the statute is not in violation of the Fourteenth Amendment, and the request for preliminary injunction is denied.

E. Gordon West, United States District Judge.
Frank B. Ellis, United States District Judge.

June 29, 1962

[fol. 40] Before Wisdom, Circuit Judge, and West and Ellis, District Judges.

WISDOM, Circuit Judge, dissenting:

In the eyes of the Constitution, a man is a man. He is not a white man. He is not an Indian. He is not a negro.

If private persons identify a candidate for public office as a negro, they have a right to do so. But it is no part of the business of the State to put a racial stamp on the ballot. It is too close to a religious stamp. It has no reasonable relation to the electoral processes.

When courts have struck down statutes and ordinances requiring separate seating arrangements in buses, separate restrooms, and separate restaurants in state-owned or operated airports and bus terminals, it was not because the evidence showed that negroes were restricted to uncomfortable seats in buses, dirty restrooms, and poor food. It was because they sat in buses behind a sign marked "colored", entered restrooms under the sign "colored", and could be served food only in restaurants for "colored". It is the stamp of classification by race that makes the classification invidious.

On principle, the case before us cannot be distinguished from McDonald v. Key, 10 Cir., 1955, 224 F.2d 608, *cert. den'd*, 350 U. S. 895. In that case the court passed on an Oklahoma statute requiring that any "candidate who is other than of the white race, shall have his race designated upon the ballots in parenthesis after his name." Under the Oklahoma constitution, the phrase "white race" includes

not only members of that race, but members of all other races except the negro race. The court held that this resulted in a denial of equality of treatment with respect to negroes who run for office. As a practical matter, in Okla- [fol. 41] homa, the omission of any racial designation on the ballot amounted to the candidate identifying himself as a white man just as surely as a negro candidate would identify himself by the word "negro" after his name. The result was essentially the same result intended to be accomplished by the Louisiana statute. Act 538 of 1960 is somewhat more sophisticated in that there is superficial appearance of equality of treatment. The effect is the same in that candidates are classified by race, and the State is using the elective processes to furnish information and stimulus for racial discrimination in the voting booth.

The State's imprimatur on racial distinctions on the ballot is no more valid than the State's imprimatur on separate voting booths. In Anderson v. Courson, 1962, 203 F. Supp. 806 the District Court for the Middle District of Georgia held that maintenance of racially segregated voting places deprived negroes of equal protection of the law "in the matter of the exercise of the elective franchise, a function and prerogative of utmost importance in the process of government, and so intrinsically characteristic of the dignity of citizenship". (Judge Bootle, 203 F. Supp. at 811.)

Considering the extent of media of information today, it is highly unlikely that any voters will be confused by lack of racial identification of candidates on the ballot. Considering the number of parishes having a large negro population, it is entirely likely that a racial stamp will help as much as it will hinder negro candidates for public office in Louisiana. The vice in the law is not dependent on injury to negroes. The vice in the law is the State's placing its power and prestige behind a policy of racial classifica- [fol. 42] tion inconsistent with the elective processes. Justice Harlan put his finger on it many years ago when he said that the "Constitution is color-blind". If there is one area above all others where the Constitution is color-blind, it is

the area of state action with respect to the ballot and the voting booth.

I respectfully dissent.

[fol. 43] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

MOTION FOR LEAVE TO FILE AMENDED OR SUPPLEMENTAL COMPLAINT—Filed September 19, 1962

Plaintiff moves this Court for leave to file the attached Amended or Supplemental Complaint on the ground that the transactions, occurrences, and events stated therein have happened since the date of plaintiff's original complaint and that it is in the interest of justice that all issues between plaintiff and defendant be litigated in this action.

Respectfully submitted,

Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana; Jack Greenberg, James M. Nabrit, III, Michael Meltsner, Norman Amaker, 10 Columbus Circle, Suite 1790, New York 19, New York, Attorneys for Complainants.

[fol. 44]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted].

PROPOSED AMENDED OR SUPPLEMENTAL COMPLAINT

I

Jurisdiction

The jurisdiction of this Court has been invoked and is further invoked pursuant to Title 28, United States Code, Section 1343(3) in that: this action is authorized by Title 42, United States Code, Section 1983, to be commenced by any citizen of the United States or other person within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage of any right, privilege or immunity secured by the Fourteenth Amendment and the Fifteenth Amendment to the Constitution of the United States and secured by Title 42, United States Code, Section 1971(a) and 1981, providing that all citizens of the United States shall be entitled and [fol. 45] allowed to vote without distinction of race and for the equal rights of citizens and of all persons within the jurisdiction of the United States.

The jurisdiction of this Court has been invoked pursuant to Title 28, United States Code, Section 2281, this being an action for a permanent injunction restraining, upon the grounds of unconstitutionality, the enforcement of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, of which a duly certified photostat copy was appended, incorporated and made a part of complainants' original complaint.

II

Complainants bring this action as a class action pursuant to Rule 23(a)(3) of the Federal Rules of Civil Proce-

dure on their own behalf and on the behalf of all other Negroes similarly situated with respect to the matter here involved. This class is so numerous as to make it impracticable to bring them all before the Court but there are common questions of law and fact, a common relief is sought, and complainants adequately represent the interests of the class.

III

This is a proceeding pursuant to Title 28, United States Code, Sections 2201 and 2202 for a declaratory judgment, declaring the rights and other legal relations of complainants and other Negroes similarly situated in the subject matter in controversy between the parties, to wit:

Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the rights, privileges and immunities of complainants and other Negroes similarly situated, as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and [fol. 46] secured by Title 42, United States Code, Sections 1971(a) and 1981 to seek and obtain public offices free from state imposed racial distinctions and discrimination and to vote free from abridgements, denials and distinctions imposed by the State?

IV

The original verified complaint in this action was filed on June 8, 1962. Complainants Dupuy H. Anderson and Acie J. Belton were then and are now citizens of the United States and residents of lawful age of the Parish of East Baton Rouge, State of Louisiana. Complainants on that date were duly qualified candidates for the democratic nomination to the office of school board member of East Baton Rouge Parish, Louisiana School Board, State of Louisiana, for the four year term. Complainant Anderson was a candidate from Ward One of East Baton Rouge Parish and complainant Belton was a candidate from Ward Two of East Baton Rouge Parish.

V

The original verified complaint averred that the defendant Wade O. Martin, Jr., is a citizen of the United States and is the duly elected Secretary of State of Louisiana who, by the terms of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, is expressly charged with enforcing the provisions of said Act. On information and belief complainants allege that the defendant is presently the Secretary of State of the State of Louisiana and is currently charged with enforcing the provisions of the above-named Act.

VI

Complainants in the original verified complaint alleged that the operation and enforcement of said Act, No. 538, [fol. 47] invades, denies and abridges their rights, privileges and immunities as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and as secured by Title 42, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden on the exercise of their rights and privileges to seek and obtain public office based solely on race; and that, further, said Act by its purpose and effect places the power and prestige of the State of Louisiana behind distinctions based solely on race and that said Act by its purpose and effect abridges the right to vote of complainants and their supporters. Complainants in the original verified complaint filed in this cause prayed the issuance of a preliminary and permanent injunction restraining the operation and enforcement of said Act No. 538.

VII

Complainants further allege that on June 11, 1962 their motion for a temporary restraining order on the grounds of immediate and irreparable injury was denied by order of this Court. Complainants also allege that their motion for preliminary injunction on similar grounds was denied on June 26, by order of this Court.

VIII

The primary election in which complainants were candidates was held in the Parish of East Baton Rouge on July 28, 1962. Complainants allege that the provisions of Act No. 538 were in full force and effect at that time. Complainants allege on information and belief that every application, identification or declaration of candidacy and every certificate of nomination and all nomination papers pertaining to them specified their race and that the ballots [fol. 48] used in said primary election specified their race by notation in parenthesis succeeding their names. In the democratic primary election held in the Parish of East Baton Rouge on July 28, 1962, complainant Anderson was defeated. Complainant Belton was defeated in the runoff election held on September 1, 1962. Each complainant alleges that his unsuccessful candidacy was influenced substantially by the operation and enforcement of Act No. 538. Complainants further allege that the continued operation and enforcement of Act No. 538 invade, deny and abridge their rights, privileges and immunities as guaranteed by the Fourteenth and Fifteenth Amendments to the Constitution of the United States and as secured by Title 24, United States Code, Sections 1971(a) and 1981 in that said Act by its purpose and effect imposes a disability and burden on complainants in the exercise of their right and privilege to seek and obtain public office not shared by other candidates for office; and that said Act by its purpose and effect places the power and prestige of the State behind distinctions based solely on race and that said Act by its purpose and effect abridges their right to vote and the right to vote of their supporters and the members of the class they represent.

IX

Complainants allege that they intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office in the Parish of East Baton Rouge and in the

State of Louisiana in the future. Complainants allege that the continued operation and enforcement of Act No. 538 will violate their rights to equal protection of the laws and the due process of law guaranteed under the Fourteenth Amendment to the Constitution of the United States.

[fol. 49]

X

Complainants also allege that they are duly registered voters in East Baton Rouge Parish who fully intend to vote in all future elections held in the Parish of East Baton Rouge. Complainants aver that the continued operation and enforcement of Act No. 538 will have the effect of impairing the efficacy of their votes and therefore will deprive them of their right to vote as guaranteed under the Fifteenth Amendment to the Constitution of the United States.

Wherefore, complainants pray:

1) That the Court advance the complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the Court enter a permanent injunction to enjoin and restrain the defendant, his subordinates, agents, and employees from enforcing Act No. 538 of the 1961 Regular Session of the Louisiana Legislature on the grounds that said Act is unconstitutional, null, void, invalid, and without legal force and effect in that said Act is in violation of the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Title 42, United States Code, Sections 1981, 1971(a).

2) The Court adjudge, decree and declare the right and legal relations of the parties to the subject matter here in controversy and that such declaration shall have the force and effect of a final judgment or decree and that the Court adjudge, decree and declare that Act No. 538 of the Regular Session of the Louisiana Legislature for 1960 is unconstitutional, void and invalid and in violation of the [fol. 50] Fourteenth and Fifteenth Amendments to the United States Constitution.

Respectfully submitted,

Johnnie A. Jones, 530 South 13th Street, Baton Rouge 2, Louisiana; Jack Greenberg, James M. Nabrit, III, Michael Meltsner, Norman Amaker, 10 Columbus Circle, Suite 1790, New York 19, New York, Attorneys for Complainants.

Certificate of Service

This is to certify that I have this ..... day of September, 1962 served a copy of the foregoing Amended or Supplemental Complaint together with a Motion for Leave to File same and a proposed Order Granting Leave upon the Honorable Jack P. F. Gremillion, Attorney General of the State of Louisiana at the State Capitol, Baton Rouge, Louisiana, by United States mail postage prepaid.

Johnnie A. Jones, Attorney for Complainants.

[fol. 51] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

PROPOSED ORDER GRANTING LEAVE TO FILE AMENDED OR SUPPLEMENTAL COMPLAINT

This cause came on to be heard on plaintiff's motion for leave to file an amended or supplemental complaint herein, and the Court being fully advised,

It Is Ordered (1) that plaintiff be given leave to file a supplemental complaint; (2) that defendant answer or move with respect to the supplemental complaint within twenty days after the date of this order.

Date: ....., 1962

....., United States District Judge.

DENIAL OF MOTION FOR LEAVE TO FILE AMENDED AND SUPPLEMENTAL COMPLAINT—September 19, 1962

Motion for leave to file Amended & Supplemental Complaint Denied. Further ordered that no service of the proposed amended complaint need be made.

Sept. 19, 1962

E. Gordon West, U. S. District Judge.

[fol. 52]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

To: Johnnie Jones, Esq., Jack P. F. Gremillion, Esq.

Attorneys for Parties:

In accordance with Rule 77(d) of the Federal Rules of Civil Procedure, you are hereby notified that the Court (Judge West) has on September 19, 1962 rendered an Order that the motion of plaintiff for leave to file amended and supplemental complaint is Denied and has further Ordered that no service of the proposed amended complaint need be made.

Very truly yours,

A. Dallam O'Brien, Jr., Clerk, By: Mary Ann Sanford, Deputy Clerk.

mas

[fol. 53]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

DUPUY H. ANDERSON

and

ACIE J. BELTON, Complainants,

v.

WADE O. MARTIN, JR., Defendant.

ORDER DENYING ISSUANCE OF PERMANENT INJUNCTION
—September 28, 1962

Plaintiffs' motion for leave to file amended or supplemental complaint has been denied.

The Court heretofore having fully heard the arguments of counsel and having fully considered the evidence including stipulations of counsel, rendered judgment on June 26, 1962 denying plaintiffs' request for a preliminary writ of injunction. Its opinion in support of that judgment was rendered on June 29, 1962 and is incorporated herein by reference. The Court being of the opinion that for the reasons stated in its opinion, plaintiffs are not entitled to the relief sought,

It Is Ordered that plaintiffs' prayer for the issuance of a permanent injunction be and the same is hereby denied.

Dated Sept. 28, 1962.

[fol. 54] E. Gordon West, United States District Judge.

Frank B. Ellis, United States District Judge.

John Minor Wisdom, United States Circuit Judge, Dissenting.

[fol. 55] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION
Civil Action Number 2623

DUPUY ANDERSON and ACIE J. BELTON, Plaintiffs,

versus

WADE O. MARTIN, JR., Defendant.

Transcript of Stipulation—June 26, 1962

Transcript of Stipulation entered into in Open Court in the above entitled and numbered cause heard at the United States District Courthouse, New Orleans, Louisiana, on June 26, 1962 before the Honorable John Minor Wisdom, Judge, United States Court of Appeals, Fifth Circuit; the Honorable E. Gordon West, Judge, United States District Court; and the Honorable Frank B. Ellis, Judge, United States District Court, presiding.

APPEARANCES:

Jack Greenberg, Esq., and Johnnie A. Jones, Esq., Attorneys for Plaintiffs.

Harry Fuller, Esq., and Thomas McFerrin, Esq., Assistants Attorney General, State of Louisiana, Attorneys for Defendant.

(Argument on Motions Filed by Defendant.)

[fol. 56]

COLLOQUY BETWEEN COURT AND COUNSEL

Judge Wisdom: Mr. Greenberg, you may now proceed.

Mr. Greenberg: If you will give up about two minutes, your Honors, answer was just filed and apparently it admits

everything that we intended to prove. If we can check to see that we don't omit anything, it may not be necessary to put on any proof.

Judge Wisdom: I was just wondering if you could not enter into stipulation here that would probably cover all of the facts and expedite this matter? We will give you a recess if you wish.

Mr. Greenberg: May we have five minutes?

Judge Wisdom: Will that be enough? We will take as long as you need.

Mr. Greenberg: About a five or ten minute recess.

Judge Wisdom: If you need more time, we will give you more time. Mr. McFerrin, what would you say?

Mr. McFerrin: That is fine.

[fol. 57] Judge Wisdom: We will be in recess for ten minutes. Court will be in recess for about ten minutes.

(Recess 10:25 A.M. to 10:35 A.M.)

Judge Wisdom: Do you have a stipulation Mr. Greenberg and Mr. McFerrin?

Mr. Greenberg: Yes, sir. I will read this, subject to Mr. McFerrin's agreement that I have stated it correctly. It is a four part stipulation.

1. The defendant in this case is a ministerial officer required to follow the statute, and that he causes the ballots to be printed in accordance with the provisions of the statute.

2. Johnnie Jones is a member of the Negro race and is a qualified candidate for the office of District Judge in East Baton Rouge.

3. Johnnie Jones is an attorney in the Bell case heretofore mentioned by the defendant.

4. Bell is an attorney of record in this case.

Those last two stipulations were requested by the defendant.

Did I state it right?

[fol. 58] Mr. McFerrin: We would like to add that he is an attorney in this case and in the Bell case.

Mr. Greenberg: That is correct.

Judge Wisdom: Do you have any further testimony? Do you have any further evidence that you want to put in?

Mr. Greenberg: I might merely point out to the Court that there was an answer filed admitting paragraphs 4-A and 4-C of the complaint. We consider that we have proved all of the material allegations, the remaining allegations of the complaint being procedural and jurisdictional in nature.

Mr. McFerrin: The stipulation is concurred in. We have admitted these two sections.

Judge Wisdom: You have nothing further?

Mr. Greenberg: If you would like to hear argument?

Judge Wisdom: We do expect to hear argument now, but we want to make sure that you have the record in such a shape that you are both satisfied with it.

[fol. 59] Mr. McFerrin: I will proceed, now, if your Honors so desire.

Judge Wisdom: Suppose we let Mr. Greenberg argue first and then you argue.

(Argument of Counsel.)

Reporter's Certificate

The undersigned in his capacity of Official Court Reporter for the United States District Court hereby certifies the foregoing four and one-fifth pages constitute the transcript of his official Stenograph record made by him in the above entitled and numbered cause, at the time and place first hereinabove stated.

Baton Rouge, Louisiana, October 5, 1962.

Felix L. Olivier, Official Court Reporter, United States District Court, Eastern District of Louisiana, Baton Rouge Division.

[fol. 60] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Civil Action No. 2623

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed October 25, 1962

I. Notice is hereby given that Dupuy H. Anderson and Acie J. Belton, the plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order denying plaintiffs' prayer for the issuance of a permanent injunction entered in this cause on October 3, 1962.

This appeal is taken pursuant to 28 U.S.C. §1253.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The verified complaint.

2. Plaintiffs' motion for temporary restraining order.

3. Minute entry of June 11, 1962 denying the motion for temporary restraining order.

[fol. 61] 4. Plaintiffs' motion for preliminary injunction.

5. Defendant's motion to dismiss for lack of jurisdiction and of abatement.

6. Defendant's answer.

7. Transcript of stipulation of plaintiffs and defendant of June 26, 1962.

8. Order denying plaintiffs' request for preliminary injunction.

9. Opinion of the court of June 29, 1962.

10. Dissenting opinion of Judge Wisdom.

11. Plaintiffs' motion for leave to file amended or supplemental complaint.

12. Plaintiffs' amended or supplemental complaint.

13. Order denying motion for leave to file amended or supplemental complaint.

14. Order denying plaintiffs' request for a permanent injunction.

15. This notice of appeal.

III. The following questions are presented by this appeal:

1. Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

2. Whether Act No. 538 of the 1960 Regular Session of the Louisiana Legislature violates the Fifteenth Amend-
[fol. 62] ment to the Constitution of the United States.

Jack Greenberg, 10 Columbus Circle, Room 1790, New York 19, N. Y., Attorney for Appellants.

[fol. 63] Proof of Service (omitted in printing).

[fol. 64] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 65]

SUPREME COURT OF THE UNITED STATES

No. 684—October Term, 1962

DUPUY H. ANDERSON, et al., Appellants,

vs.

WADE O. MARTIN, JR.

Appeal from the United States District Court for the Eastern District of Louisiana.

ORDER NOTING PROBABLE JURISDICTION

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is placed on the summary calendar.

February 18, 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. [redacted] 51

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

JOHNNIE A. JONES
530 South 13th Street
Baton Rouge 2, Louisiana

MURPHY W. BELL
BRUCE A. BELL
LEONARD P. AVERY
SAMUEL DICKENS
WILMON L. RICHARDSON
Baton Rouge, Louisiana

Attorneys for Appellants

MICHAEL MELTSNER
NORMAN C. AMAKER
Of Counsel

INDEX

Table of Cases

STATUTES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. .....

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

JURISDICTIONAL STATEMENT

Appellants, Dupuy H. Anderson and Acie J. Belton, appeal from the order of the United States District Court for the Eastern District of Louisiana entered on October 3, 1962 denying a permanent injunction against the enforcement of a statute of the State of Louisiana which requires the designation of the race of candidates for elective office on nominating papers and ballots. They submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

Citation to Opinion Below

The opinion of the United States District Court for the Eastern District of Louisiana (R. 53) denying a preliminary injunction was rendered on June 29, 1962 and is re-

ported at 206 F. Supp. 700. The dissenting opinion of Circuit Judge Wisdom (R. 50) is reported at 206 F. Supp. 705. These opinions are reprinted in the appendix hereto at pp. 13 and 21, respectively. No further opinion was rendered with the final order, entered Oct. 3, 1962 (R. 70).

Jurisdiction

This suit was initiated in the United States District Court for the Eastern District of Louisiana to enjoin the enforcement of La. R. S. §18:1174.1 (Act No. 538 of the 1960 Regular Session of the Louisiana Legislature). It was brought pursuant to 28 U. S. C. §§1331, 1343(3) and 42 U. S. C. §§1971a, 1981, 1983, and was heard by a three judge court convened under 28 U. S. C. §§2281 and 2284.

The order of the District Court denying the prayer for issuance of a permanent injunction is dated September 28, 1962 and the time of its entry is October 3, 1962 (R. 70; see appendix *infra*, p. 24). Notice of Appeal to this Court was filed in the District Court on October 25, 1961 (R. 79). Jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by 28 U. S. C. §1253.

The following cases sustain this Court's jurisdiction on direct appeal: *Florida Lime and Avocado Growers* v. *Jacobsen*, 362 U. S. 73; *Kessler* v. *Department of Public Safety*, 369 U. S. 153.

Statute Involved

La. R. S. §18:1174.1 enacted as Act No. 538 of the 1960 Regular Session of the Louisiana Legislature. It is printed in volume 2 of the Louisiana Revised Statutes, 1960 Supplement, p. 385. The statute provides as follows:

Designation of race of candidates on paper and ballots—A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein whether such candidate is of the Caucasian race, the Negro race or other specified race.

B. Chairman of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses () beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

Question Presented

Whether La. R. S. §18:1174.1 (Act No. 538 of the 1960 Regular Session of the Louisiana Legislature) which provides for the designation of the race of candidates for elec-

tive office on nomination papers and ballots in all primary, general or special elections violates the equal protection and due process clauses of the Fourteenth Amendment, and the Fifteenth Amendment to the Constitution of the United States.

Statement of the Case

Appellants, Negro citizens of the United States and the State of Louisiana, and residents of the Parish of East Baton Rouge, Louisiana, were candidates for nomination to the office of School Board member of the Parish of East Baton Rouge in the Democratic Party primary election held on July 28, 1962. They filed a complaint in the District Court for the Eastern District of Louisiana on June 8, 1962 to enjoin the enforcement of Act No. 538 of the 1960 Regular Session of the Louisiana Legislature, naming as defendant the Secretary of State of the State of Louisiana who, by the terms of the statute, was charged with its enforcement (R. 1). Asserting that the statute violated the First, Fourteenth, and Fifteenth Amendments to the Constitution of the United States, plaintiffs prayed for preliminary and permanent injunctions and a temporary restraining order. They also asked that a three-judge court be convened pursuant to 28 U. S. C. §§2281, 2284.

On June 11, 1962 the Motion for Temporary Restraining Order was denied by District Judge West, and thereafter a three-judge court was convened (R. 13; 18).

The cause was heard on June 26, 1962 before the three-judge court. At the hearing an Answer was filed admitting many facts alleged in the complaint (R. 31). Defendant also moved to dismiss for lack of jurisdiction (R. 28). The court recessed to consider its jurisdiction and having concluded that the case was properly before it reconvened to hear the merits (R. 54).

In open court the parties stipulated that the defendant was a ministerial officer required to follow R. S. §18:1174.1 and that he caused the ballots to be printed in accordance with the provisions of the statute (R. 76-77). After argument, the motion for preliminary injunction was denied by the court on June 26, 1962 with Judge Wisdom dissenting (R. 25). Thereafter, on June 29, 1962 the majority and dissenting opinions were filed.

On September 19, 1962 District Judge West denied plaintiffs' Motion for Leave to File a proposed Amended or Supplemental Complaint which alleged that the aforementioned primary election was held on July 28, 1962 and that in accordance with the statute in issue the race of appellant was noted beside their names on the ballot (R. 66); that appellant Anderson was defeated in the primary and appellant Belton was defeated in a subsequent run-off election held September 1, 1962 (R. 66); that appellants' unsuccessful candidacies were substantially influenced by the operation and enforcement of the statute (R. 66); that appellants "intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office" in the parish and state in the future (R. 66).

On September 28, 1962, the District Court signed, and on October 3, 1962, entered a final order denying the prayer for permanent injunctive relief (R. 70). This order incorporated by reference the opinion of June 29, 1962, and again Judge Wisdom noted his dissent.

Notice of Appeal was filed in the District Court on October 25, 1962 (R. 79).

The Question Presented Is Substantial

La. R. S. §18:1174.1 requires all candidates for elective office in every election in Louisiana to state on every application for or notification or declaration of candidacy whether they are "of the Caucasian race, the Negro race, or other specified race." It requires the Secretary of State to print the racial description so obtained in parentheses beside the name of every candidate on the ballots used "in any state or local, primary, general or special election." Plaintiffs, both candidates for office in a primary election as well as being qualified voters, sued to enjoin the Secretary of State from enforcing this law by making the required racial designation on the ballot.

The majority of the court below, District Judges West and Ellis, held the statute valid and enforceable as not repugnant to the Fourteenth or Fifteenth Amendments to the Constitution of the United States. The majority opinion by Judge West undertakes to distinguish the Louisiana statute in suit from a similar Oklahoma law which was held unconstitutional in *McDonald* v. *Key*, 224 F. 2d 608 (10th Cir. 1955), cert. denied 350 U. S. 895.[1]

The opinion below held that while the Oklahoma law required that the race of candidates be designated on ballots only if they were "other than of the white race" and thus treated Negroes differently from other candidates, the Louisiana statute was sufficiently different to be valid since it required that candidates of all races be so designated on the ballot. The majority also held that a candidate has no right not to have his race disclosed and that the court was "not disposed to create a shield against the

[1] This opinion reversed a District Court opinion upholding the Oklahoma statute at 125 F. Supp. 775 (W. D. Okla. 1954).

brightest light of public examination of candidates for public office" (R. 57).

Circuit Judge Wisdom adopted a contrary view and agreed with appellants' contention that *McDonald* v. *Key*, *supra*, could not be distinguished in principle. As he observed, and as petitioners submit is altogether obvious, "the omission of any racial designation on . . . [an Oklahoma] ballot amounted to the candidate identifying himself as a white man just as surely as a Negro candidate would identify himself by the word 'Negro' after his name. The result was essentially the same result intended to be accomplished by the Louisiana statute" (R. 51).[2]

Indeed, the trial court in *McDonald* v. *Key*, 125 F. Supp. 775, 777 (W. D. Okla. 1954), relied on this asserted equality in treatment in upholding the Oklahoma statute using reasoning very similar to that of the court below in the present case. The Oklahoma District Court said that placing the word "Negro" on the ballot was "merely descriptive and properly serves to inform the electors of the fact that the candidate is of African descent," and added that it "likewise serves to inform the voters that the other candidates are members of the 'white race'" (*Id.* at 777).

While the Tenth Circuit's decision in *McDonald* v. *Key* found a denial in equal treatment with respect to Negroes who run for office in that their race was placed on the ballot while the race of other candidates was not (224 F. 2d at 610), it is submitted that the opinion below conflicts in principle with the decision in *McDonald* v. *Key*, *supra*, and that this conflict between a Court of Appeals and a statutory three-judge District Court demonstrates that the question involved here is substantial.

---

[2] Under the Oklahoma Constitution the "white race" included all persons except Negroes. See *McDonald* v. *Key*, 224 F. 2d 608, 609 (10th Cir. 1955).

It is submitted that Judge Wisdom's dissent in this case effectively states the appropriate constitutional principles which should decide the issue and demonstrates that the result reached in *McDonald* v. *Key, supra,* is the correct one.

The Louisiana law's requirement that a candidate state his race in order to gain a place on the ballot and that the Secretary of State print each candidate's race in parentheses beside his name on the ballot infringes the liberty of citizens and introduces a racial classification into the electoral process while serving no legitimate end of the State. Neither the State nor the court below has asserted any legitimate governmental purpose to be served by the required disclosure and designation. To be sure, it is said that this designation informs the electorate, but no one has said what state objective this accomplishes. A state might rationally require that a candidate disclose and that the voters be told of his qualifications for office, or indeed, perhaps, even of his views on issues relating to the office sought. But, racial designations have no rational relationship to candidates' qualifications, and the State has no business placing its power and prestige behind a system of racial identification of citizens. Electors may often cast their ballots on the basis of the candidate's race, religion, national origin, or other factors not related to his qualifications for office, but it is no legitimate object of the state to feed or stimulate such prejudices in the elections it conducts.

Indeed, racial classifications so rarely have any rational connection with any legitimate objects of government as to be "immediately suspect" necessitating "the most rigid scrutiny." *Korematsu* v. *United States*, 323 U. S. 214, 216. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people

whose institutions are founded upon the doctrine of equality." *Hirabayashi* v. *United States*, 320 U. S. 81, 100.

Beyond the absence of any valid state purpose in compelling candidates to declare their race and in putting a racial stamp on them, thus requiring them to run for office as Negroes or as whites, this statute must be viewed in the context of Louisiana's well-known policy of racial discrimination against Negroes. This Court's attention has been repeatedly drawn to various manifestations of Louisiana's officially declared policy of racial separation all designed to brand Negroes as inferiors to be set apart from whites by the State.[3]

Having legally branded Negroes as an inferior race by a host of laws and practices applied throughout community life, Louisiana now, by R. S. §18:1174.1 insures that the public will identify as such any individual member of the state-designated "inferior race" who seeks public office. In the context of this state policy, it is plainly no answer to say that caucasians are also required to make similar self-identifications and to be racially designated on the ballots. To be labelled as a member of the dominant majority racial group is quite a different thing than to be labelled as a member of a legally disadvantaged minority race. As Judge Wisdom wrote in *Hall* v. *St. Helena Parish School Board*, 197 F. Supp. 649, 655 (E. D. La. 1961), aff'd 368 U. S. 515:

> To speak of this law as operating equally is to equate equal protection with the equality Anatole France spoke of: "The law in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread."

---

[3] See the discussion of Louisiana's policy in Mr. Justice Douglas's concurring opinion in *Garner* v. *Louisiana*, 368 U. S. 157, 181.

This Court rejected a parallel argument saying that "equal protection of the laws is not achieved through indiscriminate imposition of inequalities." *Shelley* v. *Kraemer*, 334 U. S. 1, 22.

The majority of the Court that decided *Plessy* v. *Ferguson*, 163 U. S. 537, 551, subscribed to the view that segregation laws, such as the Louisiana railroad segregation laws and the similar laws that remain in that State, did not stamp Negroes as inferior, but rather, that it was Negroes themselves who placed that construction upon them. *Brown* v. *Board of Education*, 347 U. S. 483, rejected this notion holding that segregation laws did, indeed, have their intended result, namely, to disadvantage Negroes, the racial minority set apart by the State. The *Brown* case vindicated the first Justice Harlan's dissent in *Plessy*, *supra* at 554, where he wrote:

> In respect of civil rights, common to all citizens, the Constitution of the United States does not, I think, permit any public authority to know the race of those entitled to be protected in the enjoyment of such rights . . . But I deny that any legislative body or judicial tribunal may have regard to the race of citizens when the civil rights of those citizens are involved.

Mr. Justice Harlan further expounded his view that the post-Civil War amendments to the Constitution "removed the race line from our governmental systems" (*Id.* at 555), stating in often quoted language that:

> But in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as

man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved (at 559).

As Judge Wisdom's opinion indicated, racial classifications are particularly inappropriate in the electoral process. "If there is one area above all others where the Constitution is color-blind, it is the area of state action with respect to the ballot and the voting booth" (206 F. Supp. at 705). Cf. *Nixon* v. *Herndon*, 273 U. S. 536, 541. The purpose of the Fifteenth Amendment to "forbid all discriminations between white citizens and citizens of color in respect to their right to vote" (*United States* v. *Reese*, 92 U. S. 214, 226) and to proscribe denials or abridgements of the right on the basis of race is patent.

Although this particular Louisiana law does not operate directly to disfranchise Negroes or affect their entitlement to vote and participate in the system of self-government, it does affect their votes by injecting racism into the electoral process in a manner calculated to stimulate the same racial animosities otherwise encouraged by Louisiana's segregation laws. Louisiana thus encourages racial discrimination by voters. Such an indirect effort to limit Negro participation in government accomplishes the same objective as an abridgement or denial of the franchise on the basis of race. That this result will flow from the racially motivated choices of voters does not make it any less repugnant to the Constitution since governmental action under R. S. 18:1174.1 initiates the chain of events resulting in the discrimination, and this interplay of governmental and private action makes it more likely to occur. Cf. *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 463.

Finally, the fact that this statute might operate to benefit a Negro candidate and against a white candidate in a community, unlike East Baton Rouge where plaintiffs re-

side, which had a Negro electoral majority, is not relevant. For, it is submitted that the State has a duty under the Fifteenth Amendment and the Fourteenth Amendment to be "color-blind" and not to act so as to encourage racial discrimination in the electoral process against any racial group.

CONCLUSION

It is respectfully prayed that the Court should review the judgment of the District Court and enter a judgment reversing the decision below.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

JOHNNIE A. JONES
530 South 13th Street
Baton Rouge 2, Louisiana

MURPHY W. BELL
BRUCE A. BELL
LEONARD P. AVERY
SAMUEL DICKENS
WILMON L. RICHARDSON
Baton Rouge, Louisiana

Attorneys for Appellants

MICHAEL MELTSNER
NORMAN C. AMAKER
Of Counsel

APPENDIX

UNITED STATES DISTRICT COURT

DISTRICT OF LOUISIANA

Civ. A. No. 2623

June 29, 1962

DUPUY H. ANDERSON and ACIE J. BELTON,

Complainants,

v.

WADE O. MARTIN, JR.,

Defendant.

Opinion

Before WISDOM, Circuit Judge, and WEST and ELLIS, District Judges.

WEST, District Judge.

In 1960 the Louisiana Legislature enacted legislation requiring the Secretary of State to place a racial designation over the name of every candidate on the ballot in the primary or general election.[1] Under the statute the

---

[1] LSA–R.S. Sec. 18:1174.1, Act 538 of 1960.

"Sec. 1174.1 Designation of race of candidates on paper and ballots—A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein whether such candidate is of the Caucasian race, the Negro race or other specified race.

"B. Chairmen of party committees, party executive committees, presidents of boards of supervisors of election or any

candidate must place his name and racial designation on his certificate of candidacy and the Secretary of State uses that information in preparing the ballot. The designation applies to all candidates. The Statute requires that the designation of "Caucasian", "Negro", or "other specified race" be placed on the ballot after the name of each candidate.

Plaintiffs are two Negro candidates for the school board in East Baton Rouge Parish, State of Louisiana. They challenge the constitutionality of this statute under the First, Fourteenth and Fifteenth Amendments to the United States Constitution and request injunctive relief against the Secretary of State prior to the July 28, 1962, Democratic primary.

The District Judge denied a temporary restraining order and thereafter a three-judge court was convened pursuant to 28 U. S. C. A. § 2284. Defendant filed his answer together with a motion to dismiss for lack of jurisdiction in court on the day of the hearing. The court recessed to consider its jurisdiction and having concluded that it had jurisdiction,[2] the court reconvened to hear the merits. The parties

---

person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

"C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro or other specified race, which information shall be obtained from the documents described in Subsection A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots."

[2] Jurisdiction is properly invoked under 28 U. S. C. A. §§ 1331, 1343(3), and 42 U. S. C. A. §§ 1971(a), 1981, 1983.

stipulated that the facts were as stated in plaintiffs' complaint; the case proceeded to argument, and was submitted.

At the outset it is important to grasp the fundamental relationships of the parties. Plaintiffs are candidates for office and the rights they advance arise out of that status. Secondly, the statute in question is a state statute and applies to all. While it requires the Negro to have his race disclosed on the ballot, it requires the same of the Caucasian, Mongolian, and so on. The garden variety discrimination between white and Negro is not involved. Moreover, the state adopts no "sophisticated" method of discrimination that might give us pause.[3] The sole question is whether the constitutional rights of a Negro candidate are abridged when his race, like that of all other candidates, is disclosed on the ballot pursuant to state statute.

Precisely which constitutional rights plaintiffs advance is somewhat difficult to determine. Certainly the Fifteenth Amendment gives plaintiffs no comfort. While the Fourteenth Amendment apparently protects rights broader than those originally conceived by its drafters due to the Equal Protection and Due Process clauses,[4] the Fifteenth Amendment is direct in its protection.[5] It is exclusively the right to vote, and nothing more, which, in terms, is protected. Surely the statute must be interpreted in such a way as to protect the fundamental power of the franchise in whatever context a State bent on discrimination seeks to cast it.[6] But

---

[3] See *Lane* v. *Wilson*, 307 U. S. 268, 59 S. Ct. 872, 83 L. Ed. 1281.

[4] *Brown* v. *Board of Education*, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873; *Bolling* v. *Sharpe*, 347 U. S. 497, 74 S. Ct. 693, 98 L. Ed. 884.

[5] U. S. Constitution Amend., XV.

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."

[6] *Terry* v. *Adams*, 345 U. S. 461, 73 S. Ct. 809, 97 L. Ed. 1152; *United States* v. *Classic*, 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368.

at no time has the Supreme Court expanded the protection of the amendment beyond the franchise. Even with the recognition that the Fifteenth Amendment created affirmative rights,[7] the court has not gone beyond the protection of the voter per se. Likewise, *McDonald* v. *Key*,[8] which is urged on us as controlling, recognized that the right to vote is not involved in a statute requiring racial designations on the ballot. Moreover the facts of the case do not suggest a restriction on voting rights. The unfathomable vagaries of the voter operate just as freely with this statute as without it. This statute merely contributes to a more informed electorate. In any event, plaintiffs do not validly assert a right under the Fifteenth Amendment.

[1] There is a creeping tendency, when dealing with problems in the area of the First and Fourteenth Amendments,[9] to outlaw State statutes on the grounds of their lack of rightness or wisdom, while under the misapprehension that only their constitutionality is being tested. This the Supreme Court has told us, more than once, we may not do.[10] With due respect for our federalism, the court must examine the Constitution and the various lines of

---

[7] Ex parte Yarborough, 110 U. S. 651, 4 S. Ct. 152, 28 L. Ed. 274; *Guinn* v. *United States*, 238 U. S. 347, 35 S. Ct. 926, 59 L. Ed. 1340.

[8] 224 F. 2d 608 (10 Cir. 1955).

[9] So that the matter may not confuse the issue let it be noted that the First Amendment is wholly inapplicable to this case dealing as it does with the powers of Congress. It is the rights enumerated in the First Amendment which are included within the Fourteenth Amendment upon which plaintiff relies. *Gitlow* v. *New York*, 268 U. S. 652, 45 S. Ct. 625, 69 L. Ed. 1138.

[10] *Carpenters and Joiners Union, etc.* v. *Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807, 86 L. Ed. 1143; *Giboney* v. *Empire Storage & Ice Co.*, 336 U. S. 490, 69 S. Ct. 684, 93 L. Ed. 834; *International Brotherhood of Teamsters, etc., Union* v. *Hanke*, 339 U. S. 470, 70 S. Ct. 773, 94 L. Ed. 995; *Building Service Employees, etc.* v. *Gazzam*, 339 U. S. 532, 70 S. Ct. 784, 94 L. Ed. 1045.

Supreme Court decisions and determine if the State action contravenes the Constitution. The examination must be liberal so as not to exalt form over substance; it must be circumspect so as to accord the states their just powers.[11]

[2] Plaintiffs' reliance on the Fourteenth Amendment suggests two lines of Supreme Court cases which might control this action. The first of these is the right to anonymity defined in *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488. This case, plus *Bates* v. *Little Rock*, 361 U. S. 516, 80 S. Ct. 412, 4 L. Ed. 2d 480, and *Talley* v. *California*, 362 U. S. 60, 80 S. Ct. 536, 4 L. Ed. 2d 559, expounded the proposition that a person exercising freedom of speech or association had a right to anonymity if disclosure entailed "the likelihood of a substantial restraint upon the exercise * * * of their right to freedom of association."[12] Justice Black in *Talley* v. *California*, *supra* at 65, 80 S. Ct. at 539, explained that "the reason for these holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance."

It may be assumed, for present purposes, that plaintiffs have a constitutional right to seek office.[13] However, no matter what the length and breadth of that right, there is no basis for saying that a candidate for office has a right to anonymity. The Court in *N. A. A. C. P.* v. *Alabama*, was of the opinion that the injury to a right subsequent to

---

[11] "To maintain the balance of our federal system, insofar as it is committed to our care, demands at once zealous regard for the guarantees of the Bill of Rights and due recognition of the powers belonging to the states. Such an adjustment requires austere judgment, and a precise summary of the result may help to avoid misconstruction." *Milk Wagon Drivers, etc.* v. *Meadowmoor*, 312 U. S. 287, 297, 61 S. Ct. 552, 85 L. Ed. 836.

[12] *N. A. A. C. P.* v. *Alabama*, *supra*, 357 U. S. at 462, 78 S. Ct. at 1172.

[13] See *McDonald* v. *Key*, 10 Cir., 224 F. 2d 608.

disclosure of identity precludes the right to identification. A political candidate does not lose his right to run for office by disclosure of his race. Further, it is safe to say that his race, like his name and political affiliation which also appear on the ballot,[14] will come out in the campaign. This court is not disposed to create a shield against the brightest light of public examination of candidates for public office.

The Court in *Bates, N. A. A. C. P.* v. *Alabama*, and *Talley*, recognized that the right to anonymity could be abridged in certain instances. However, in those instances, the State bore the burden of showing an overriding interest in the public sufficient to justify the partial abridgement of the right.[15] In the case before us the right of anonymity on the ballot does not exist so far as this court can determine. Thus this court is not put to any balancing since no personal interests are placed in the scale opposite the State interest, whatever it may be. We conclude that the Louisiana statute does not violate the Fourteenth Amendment on that score.

The second line of cases which appears applicable are the "state action" cases having their matrix in *Shelley* v. *Kraemer*, 334 U. S. 1, 68 S. Ct. 836, 92 L. Ed. 1161, and *Barrows* v. *Jackson*, 346 U. S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586. It is insufficient to state that these cases are distinguishable because state action is clear in this case. These cases must be read for their meaning as well as their facts.

The first case is, of course, *McDonald* v. *Key, supra*. While it does not fall precisely within the "state action" concept, it is the case closest on its facts and involves the

---

[14] LSA–R. S. 18:671.

[15] See also *International Brotherhood of Teamsters, etc., Union* v. *Hanke*, 339 U. S. 470, 474, 70 S. Ct. 773, 94 L. Ed. 995; *International Brotherhood of Teamsters, etc.* v. *Vogt, Inc.*, 354 U. S. 284, 77 S. Ct. 1166, 1 L. Ed. 2d 1347.

equal protection clause. There the Tenth Circuit found that the requirement that only Negroes have their race designated on the ballot violated the Fourteenth Amendment. Plaintiffs attempt to make more of this case than is in it. The Tenth Circuit did not require any intricate theory of constitutional deprivation to strike down the Oklahoma Statute. Negro candidates were treated different from all other candidates without good reason being shown. Given those facts the Court need not have gone further, and it did not. This is not the case before us. Here all candidates must state their race and have it printed on the ballot. Plaintiffs must look further to find unconstitutionality.

Plaintiffs would have us find in *Shelley* v. *Kraemer* and its progeny some principle which would deter a state from placing racial classifications on the ballot. A brief synopsis of the principle of these cases is in order. The Supreme Court, in the first instance, recognized that discrimination by private individuals was beyond the scope of the Fourteenth Amendment under the Civil Rights Cases.[16] To this was added the undeniable proposition that discrimination by the states was improper under the Fourteenth Amendment. Further the Court held that ostensibly private discrimination which was in fact enforced by the state was discriminatory "state action" under the Fourteenth Amendment.[17] The crucial fact in all these cases, insofar as the instant case is concerned, is that there existed a prior act of actually proven discrimination to which the state was privy. Either the private individual was seeking to exclude Negroes from a neighborhood,[18] or denying Negroes the

---

[16] 109 U. S. 3, 3 S. Ct. 18, 27 L. Ed. 835. See *Shelley* v. *Kraemer*, 334 U. S. 1, 13, 68 S. Ct. 836, 92 L. Ed. 1161.

[17] *Shelley* v. *Kraemer*, *supra*; *Barrows* v. *Jackson*, 346 U. S. 249, 73 S. Ct. 1031, 97 L. Ed. 1586; *Terry* v. *Adams*, 345 U. S. 461, 73 S. Ct. 809, 97 L. Ed. 1152; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 81 S. Ct. 856, 6 L. Ed. 2d 45.

[18] *Shelley* v. *Kraemer*, *supra*; *Barrows* v. *Jackson*, *supra*.

right to vote,[19] or segregating buses,[20] train terminals,[21] restaurants,[22] or golf courses.[23] In those cases the state sought either to enforce the discrimination[24] or permit it within the public domain.[25] Since the Louisiana statute does not discriminate on its face, the Court must ask where the proven discrimination lies. Plaintiffs offer no proof of actual discrimination against them.[26] They ask the court to take notice that discrimination among the electorate will somehow occur as a result of this statute.[27] Precisely how this discrimination against plaintiffs can be discovered is not made clear, much less how the state controls the discrimination through this statute. Nothing that we can find in the state action cases suggest that a court may take a state statute, and gaze into the future, seeking some gossamer possibility of discrimination in a group of individuals wholly beyond the control of the state. The discrimination

---

[19] *Terry* v. *Adams, supra.*

[20] *Boman* v. *Birmingham Transit Company*, 5 Cir., 280 F. 2d 531.

[21] *Baldwin* v. *Morgan*, 5 Cir., 287 F. 2d 750.

[22] *Burton* v. *Wilmington Parking Authority, supra.*

[23] *Hampton* v. *City of Jacksonville*, 5 Cir., 304 F. 2d 320.

[24] *Shelley* v. *Kraemer, supra*; *Boman* v. *Birmingham Transit Co., supra.*

[25] *Burton* v. *Wilmington Parking Authority, supra.*

[26] A classification in a statute having some reasonable basis does not offend against the equal protection clause of the Constitution even though in practice results in some inequality. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Morey* v. *Doud*, 354 U. S. 457, 77 S. Ct. 1344, 1 L. Ed. 2d 1485.

[27] Plaintiff's reliance on *Hall* v. *St. Helena Parish School Board*, E. D. La., 197 F. Supp. 649, is unavailing since in that case the court was able to determine purpose from concrete results, or at the very least easily predictable consequences. Plaintiffs do not refer this court to any resulting discrimination and do not even hint at predictable results.

must be real and the state must effect it. On this record we find a nondiscriminatory statute and nothing more. Judicial notice of a state policy of segregation avails us nothing unless actual discrimination is proven as a result of that policy through the medium of this statute. We have previously found that the state treats all candidates alike.

For the foregoing reasons we conclude that the statute is not in violation of the Fourteenth Amendment, and the request for preliminary injunction is denied.

WISDOM, Circuit Judge (dissenting):

In the eyes of the Constitution, a man is a man. He is not a white man. He is not an Indian. He is not a Negro.

If private persons identify a candidate for public office as a Negro, they have a right to do so. But it is no part of the business of the State to put a racial stamp on the ballot. It is too close to a religious stamp. It has no reasonable relation to the electoral processes.

When courts have struck down statutes and ordinances requiring separate seating arrangements in buses, separate restrooms, and separate restaurants in state-owned or operated airports and bus terminals, it was not because the evidence showed that negroes were restricted to uncomfortable seats in buses, dirty restrooms, and poor food. It was because they sat in buses behind a sign marked "colored", entered restrooms under the sign "colored", and could be served food only in restaurants for "colored". It is the stamp of classification by race that makes the classification invidious.

On principle, the case before us cannot be distinguished from *McDonald* v. *Key*, 10 Cir., 1955, 224 F. 2d 608, cert. den'd, 350 U. S. 895, 76 S. Ct. 153, 100 L. Ed. 787. In that case the court had before it an Oklahoma statute requiring that any "candidate who is other than of the White race, shall have his race designated upon the ballots in paren-

thesis after his name." Under the Oklahoma constitution, the phrase "white race" includes not only members of that race, but members of all other races except the Negro race. The court held that this resulted in a denial of equality of treatment with respect to Negroes who run for office. As a practical matter, in Oklahoma the omission of any racial designation on the ballot amounted to the candidate identifying himself as a white man just as surely as a negro candidate would identify himself by the word "negro" after his name. The result was essentially the same result intended to be accomplished by the Louisiana statute. Act 538 of 1960 is somewhat more sophisticated in that there is superficial appearance of equality of treatment. The effect is the same in that candidates are classified by race, and the State is using the elective processes to furnish information and stimulus for racial discrimination in the voting booth.

The State's imprimatur on racial distinctions on the ballot is no more valid than the State's imprimatur on separate voting booths. In *Anderson* v. *Courson*, 1962, 203 F. Supp. 806, 813, the District Court for the Middle District of Georgia held that maintenance of racially segregated voting places deprived Negroes of equal protection of the law "in the matter of the exercise of the elective franchise, a function and prerogative of utmost importance in the process of government, and so intrinsically characteristic of the dignity of citizenship".

Considering the extent of media of information today, it is highly unlikely that any voters will be confused by lack of racial identification of candidates on the ballot. Considering the number of parishes having a large Negro population, it is entirely likely that a racial stamp will help as much as it will hinder Negro candidates for public office in Louisiana. The vice in the law is not dependent on injury to Negroes. The vice in the law is the State's placing

its power and prestige behind a policy of racial classification inconsistent with the elective processes. Justice Harlan put his finger on it many years ago when he said that the "Constitution is color-blind". If there is one area above all others where the Constitution is color-blind, it is the area of state action with respect to the ballot and the voting booth.

I respectfully dissent.

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

Filed October 3, 1962

Civil Action No. 2623

DUPUY H. ANDERSON and ACIE J. BELTON,

Complainants,

v.

WADE O. MARTIN, JR.,

Defendant.

Order

Plaintiffs' motion for leave to file amended or supplemental complaint has been denied.

The Court heretofore having fully heard the arguments of counsel and having fully considered the evidence including stipulations of counsel, rendered judgment on June 26, 1962 denying plaintiffs' request for a preliminary writ of injunction. Its opinion in support of that judgment was rendered on June 29, 1962 and is incorporated herein by reference. The Court being of the opinion that for the reasons stated in its opinion, plaintiffs are not entitled to the relief sought.

IT IS ORDERED that plaintiffs' prayer for the issuance of a permanent injunction be and the same is hereby denied.

Dated: Sept. 28, 1962.

(Signed) E. GORDON WEST
E. Gordon West
United States District Judge

(Signed) FRANK B. ELLIS
Frank B. Ellis
United States District Judge

(Signed) JOHN MINOR WISDOM
John Minor Wisdom
United States Circuit Judge
Dissenting

Clerk's Office

A True Copy

Oct 5 1962

(Signed) MARY ANN SANFORD
Deputy Clerk, United States District Court
Eastern District of Louisiana
Baton Rouge, La.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.,

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLANTS

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

JOHNNIE A. JONES
530 South 13th Street
Baton Rouge 2, Louisiana

MURPHY W. BELL
BRUCE A. BELL
LEONARD P. AVERY
SAMUEL DICKENS
WILMON L. RICHARDSON
Baton Rouge, Louisiana

Attorneys for Appellants

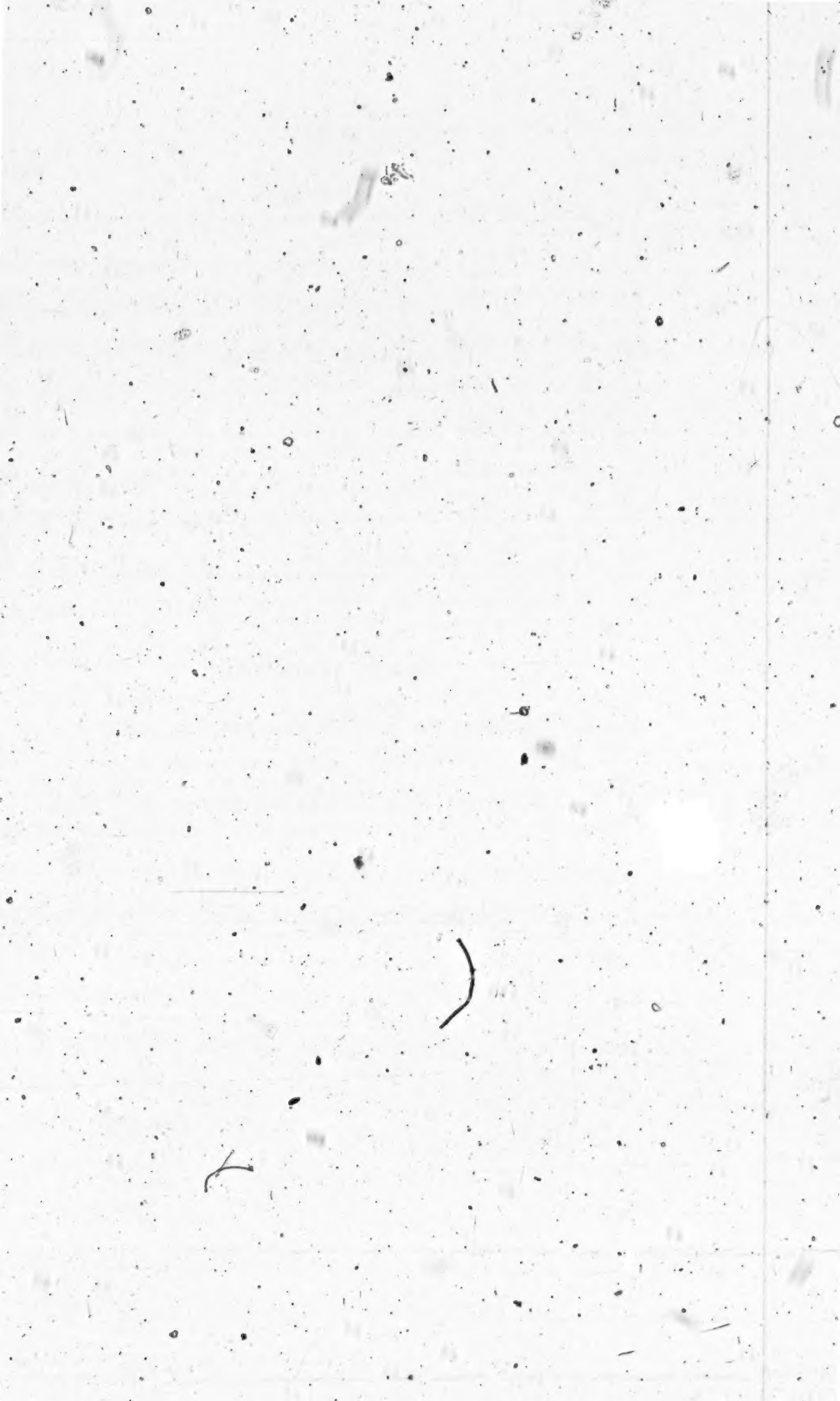
MICHAEL MELTSNER
NORMAN C. AMAKER
FRANK H. HEFFRON
Of Counsel

INDEX

Table of Cases

Statutes

OTHER AUTHORITIES



IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON and ACIE J. BELTON,

Appellants,

—v.—

WADE O. MARTIN, JR.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the three-judge District Court (R. 27) is reported at 206 F. Supp. 700. The dissenting opinion of Judge Wisdom (R. 34) is reported at 206 F. Supp. 705.

Jurisdiction

The order of the District Court denying the prayer for issuance of a permanent injunction was entered on October 3, 1962 (R. 44; Jurisdictional Statement, p. A24). Notice of Appeal to this Court was filed in the District Court on October 25, 1961 (R. 48). Appellants' Jurisdictional Statement was filed on December 21, 1962, and probable jurisdiction was noted on February 18, 1963.

Statutes Involved

La. R. S. §18:1174.1 (1960 Supp.) was enacted as Act No. 538 of the 1960 Regular Session of the Louisiana Legislature. It provides as follows:

> Designation of race of candidates on paper and ballots
>
> A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein, whether such candidate is of the Caucasian race, the Negro race or other specified race.
>
> B. Chairman of party committees, party executive committees, presidents or boards of supervisors of election or any person or persons required by law to certify to the secretary of state the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.
>
> C. On the ballots to be used in any state or local primary, general or special election the secretary of state shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

This case also involves the Fourteenth and Fifteenth Amendments to the United States Constitution.

Question Presented

Whether La. R. S. §18:1174.1, which provides for the designation of the race of candidates for elective office on nomination papers and ballots in all primary, general or special elections, violates the equal protection and due process clauses of the Fourteenth Amendment, and the Fifteenth Amendment, to the Constitution of the United States.

Statement

Appellants Dupuy H. Anderson and Acie J. Belton are Negro citizens of the United States and the State of Louisiana, residing in the Parish of East Baton Rouge, Louisiana (R. 3-4, 25). Both were candidates for nomination to the office of Member of the School Board of the Parish of East Baton Rouge in the Democratic Party primary election held on July 28, 1962 (*Ibid.*). They filed a complaint in the District Court for the Eastern District of Louisiana on June 8, 1962 to enjoin the enforcement of Act. No. 538 of the 1960 Session of the Louisiana Legislature (R. 1), which requires that each candidate's race appear beside his name on all nomination papers and ballots. The complaint named as defendant Wade O. Martin, who, as Secretary of State of the State of Louisiana, was charged by the terms of the statute with its enforcement. Asserting that the statute violated *inter alia* the Fourteenth and Fifteenth Amendments to the Constitution, plaintiffs requested preliminary and permanent injunctions and a temporary restraining order. They also asked that a three-judge court be convened pursuant to 28 U. S. C. §2281, 2284.

On June 11, 1962 the motion for temporary restraining order was denied by District Judge West (R. 15).

A three-judge court was convened (R. 17) and the cause was heard on June 26, 1962. At the hearing a responsive pleading was filed admitting many facts alleged in the complaint (R. 25). Defendant had previously filed a motion to dismiss for lack of jurisdiction (R. 22). The court denied the motion to dismiss and proceeded to a hearing on the merits (R. 21). In open court the parties stipulated that the defendant was a ministerial officer required to enforce R. S. §18:1174.1 and that he caused the ballots to be printed in accordance with the provisions of the statute (R. 45-47). After argument, the motion for preliminary injunction was denied on June 26, 1962, with Judge Wisdom dissenting (R. 21-22). The majority and dissenting opinions were filed on June 29, 1963 (R. 27, 34).

On September 19, 1962 Judge West denied (R. 43) plaintiffs' motion for leave to file a proposed amended or supplemental complaint, which alleged that the aforementioned primary election was held on July 28, 1962 and that in accordance with the statute in issue the race of each plaintiff was noted beside his name on the ballot; that plaintiff Anderson was defeated in the primary and plaintiff Belton was defeated in a subsequent run-off primary held on September 1, 1962; that the plaintiffs' unsuccessful candidacies were substantially influenced by the operation and enforcement of the statute; and that the plaintiffs "intend to be candidates in the next duly constituted democratic primary election for nomination as members of the East Baton Rouge Parish School Board and further that they intend to seek other public office" in the parish and the state in the future (R. 37-42).

On September 28, 1962 the three-judge District Court signed (R. 41), and on October 3, 1962 entered (Jurisdictional Statement, p. A24), a final order denying the prayer for permanent injunctive relief. This order incorporated by reference the opinion of June 29, 1962, and again Judge Wisdom noted his dissent.

Notice of Appeal from the denial of a permanent injunction was filed in the District Court on October 25, 1962 (R. 48). The jurisdictional statement was filed in this Court on December 21, 1962, and probable jurisdiction was noted on February 18, 1963.

Summary of Argument

La. R. S. §1174.1 compels each candidate for public office to disclose his race and requires the state to publish the race of each candidate on the ballot. The Constitution is color blind, and this statute denies equal protection of the laws because on its face it compels a classification according to race. Although racial classifications are presumptively invidious, Louisiana has shown no legitimate end to be served by the statute, and in fact the statute unconstitutionally makes racial discrimination possible and encourages the practice. Because racial classifications stigmatize the minority, they are just as much proscribed by the Constitution as more obvious forms of discrimination and physical segregation.

The racial ballot statute clearly is void because it operates with unequal effect against Negro candidates. In Louisiana society, the Negro has been relegated to an inferior status by both private and governmental action; designation as a Negro identifies the candidate with a group that is, by hypothesis according to state policy, unfit for office. Moreover, Negro voters constitute a relatively insignificant

minority of Louisiana's electorate, so that normal patterns of bloc voting, as encouraged by this statute, usually favor the white candidate.

The statute also denies individual liberty without due process of law. The state is requiring the disclosure of information with no bona fide public purpose, much less a compelling interest. By this statute, Louisiana has selected a single, highly prejudicial factor for universal publication, and thus denies the individual the liberty to seek office and campaign for office according to his own estimate of effective campaign tactics.

ARGUMENT

I.

Louisiana's Statute Providing for Racial Designation of Candidates on the Ballot Denies Equal Protection of the Laws.

Section 18.1174.1 of the Louisiana Revised Statutes (Supp. 1961) requires candidates for elective office to state on all applications, declarations of candidacy, and nomination papers whether they are "of the Caucasian race, the Negro race, or other specified race." The Secretary of State is directed by the statute to print each candidate's race in parentheses beside his name on the ballot. The appellants, Negro candidates for state office, challenge the statute's validity under the Fourteenth Amendment.

Without serving any legitimate governmental object, this statute introduces a racial classification into the electoral process. It forces a candidate to disclose information that can prejudice his chances for success at the polls. It positively assures that bigoted voters will not lose, through indolence, apathy, or inattention, an opportunity to enforce-

their racial prejudices at the polls. And it drives home to every voter in Louisiana that the State considers a candidate's race to be a factor worthy of the voter's consideration.

A. *Racial classifications are presumptively invidious and Louisiana has no legitimate governmental purpose in making such a classification on its ballots.*

Contrary to the equal protection clause of the Fourteenth Amendment, this statute on its face classifies persons according to race. It does so no less than a requirement that every man wear an arm band signifying his race or religion or nationality, cf. *American Communications Ass'n* v. *Douds*, 339 U. S. 382, 402 (1950) (dictum). But, "In the eyes of the Constitution a man is a man. He is not a white man, he is not an Indian, he is not a negro." Instant case, R. 34; 206 F. Supp. at 705 (Wisdom, *J.*, dissenting). Before the turn of the century, the first Justice Harlan called for recognition of the essential equality of citizens, rather than an emphasis on irrelevant distinctions:

> . . . in view of the Constitution, in the eye of the law, there is in this country no superior, dominant, ruling class of citizens. There is no caste here. Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man, and take no account of his color when his civil rights as guaranteed by the supreme law of the land are involved. *Plessy* v. *Ferguson*, 163 U. S. 537, 559 (dissenting opinion).

Racial differences do exist, and acknowledgment of these differences, even by the State, can occasionally serve some

useful purpose. The national census, by taking note of race, contributes information of considerable value to social research. The constitutional ban on racially discriminatory state action could not be enforced if courts were truly blind to racial groupings. In such cases the notation of racial differences is unlikely to be objectionable to any person or group, and in any event, it has some reasonable relation to the achievement of a legitimate governmental object.

Here, Louisiana has undertaken to place men in racial categories without serving any legitimate end of the State. Racial designation of candidates has no connection whatever with the State's function of regulating elections. Membership in a given race is not a qualification for office, and it could not be. A voter's knowledge of the race of the respective candidates has no bearing on his qualifications as a voter. If any valid purpose is served by the designation statute, Louisiana's attorney-general has given no hint of it.

"Classifications based solely upon race must be scrutinized with particular care, since they are contrary to our traditions and hence constitutionally suspect." *Bolling* v. *Sharpe*, 347 U. S. 497, 499; *Korematsu* v. *United States*, 323 U. S. 214, 216; *Hirabayashi* v. *United States*, 320 U. S. 81, 100. As this Court reiterated in the last term, "racial classifications are 'obviously irrelevant and invidious.'" *Goss* v. *Board of Education*, 373 U. S. 683, 687. When the state mandates that its ballots classify all candidates for public office according to race, it must come forward with some explanation.

The only explanation offered anywhere in the record is the conclusion of the court below that racial designation "contributes to a more informed electorate." R. 29; 306 F. Supp. at 702. This conclusion is of course correct, but the only conceivable result of disseminating information

to voters while they are marking their ballots in the voting booth is to encourage voting on the basis of that information. Thus, if this statute has any purpose at all, it is to stimulate and facilitate the racial prejudices of Louisiana's voters. In *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449, 463, where state-compelled disclosure of the Association's membership list was resisted on the ground that private reprisals would follow, this Court declared that "the crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power . . . that private action takes hold." See also, *Barrows* v. *Jackson*, 346 U. S. 249, 254 (award of damages would encourage use of restrictive covenants). Here the state is acting to employ the full potential of possible discrimination by its private citizens. The State can no more encourage voters to discriminate according to race than it can exhort restaurateurs, *Peterson* v. *City of Greenville*,[1] 373 U. S. 244, common carriers, *Boman* v. *Birmingham Transit Co.*, 280 F. 2d 531 (5th Cir. 1960), or school officials, *Gantt* v. *Clemson Agricultural College of South Carolina*, —— F. 2d —— (4th Cir., No. 8871, January 16, 1963), to practice segregation. And having furnished the opportunity for private discrimination, the State is not in a position to assert that discrimination would have occurred without the State's intervention, *cf. Peterson* v. *City of Greenville*, 373 U. S. 244, or to insist on proof that discrimination actually results from the state's conduct, see *Shelton* v. *Tucker*, 364 U. S. 479.

The opinion below errs—it is submitted—in its refusal to acknowledge that this Court's repeated condemnation

[1] In *Peterson* v. *City of Greenville*, *supra*, the segregation ordinance was clearly void and amounted to no more than an exhortation, although by its terms it appeared to be a requirement.

of racial classifications, e.g., *Bolling* v. *Sharpe, supra; Goss* v. *Board of Education, supra,* literally means that unjustified classifications, as well as outright discrimination and physical segregation, are constitutionally impermissible. For a time it was thought that racial segregation did not fall within the ambit of the Fourteenth Amendment, but *Brown* v. *Board of Education,* 347 U. S. 483, dissolved that confusion. It is now recognized that when a dominant majority relegates a racial minority to separate facilities, an inherent inequality of treatment springs from the inevitable stigma attached to the separation. The same is true of classification, particularly when the classification contributes to the attainment of no permissible legislative goal. The Negro candidate who must declare his race and the Negro voter who sees racial designation on the ballot are set apart and stigmatized fully as much as when forced to vote at a segregated polling place.[2] If the official classification served some justifiable governmental purpose, an acknowledgment of physical characteristics might not necessarily stigmatize the minority, but classification for the sake of classification serves only to make an issue of irrelevant differences.

B. *This statute imposes special burden on Negro candidates in Louisiana.*

The presumption that racial classifications are invidious is of course demonstrable here. There need be no diffidence in applying such a presumption when appraising a racial classification imposed by a state whose deepest public

[2] Segregated polling places and voting lists were condemned in *Anderson* v. *Courson,* 203 F. Supp. 806 (M. D. Ga. 1962). The U. S. Civil Rights Commission's Report on Voting, 67-68 (1961) reported on the use of segregated voting machines in St. Helena Parish, Louisiana.

policy commitment is to the maintenance of segregation and white supremacy.[3]

This statute, by its mere existence, is an assertion of the obvious fact that publicizing a candidate's race will have *some* impact upon elections. If Louisiana cared to deny this, it could do so only by asserting that its Legislature did a meaningless thing in passing this law.

It requires only an ordinary citizen's knowledge of the world about us to be sure that in Louisiana it does indeed make a difference whether a man is known and regarded as white or Negro, and that Louisiana's past and present laws have something to do with this difference.[4] Louisiana has so ostracized its Negro citizens, worked so long and hard to brand Negroes as in inferior class and so clearly succeeded in its efforts to stigmatize Negroes, that it is hard to imagine that the State would care to argue that a publication of a Negro candidate's race does not work to his disadvantage. To make such an argument, the State must deny the effectiveness and impact of its most massive and coveted policies.

Louisiana has branded Negroes as inferior and treated them accordingly by virtually every means available. It

---

[3] Louisiana expressed this policy unequivocally in 1960, the same year the present racial ballot law was passed, by the preamble to Act No. 630, declaring:

> "WHEREAS, Louisiana has always maintained a policy of segregation of the races, and
>
> "WHEREAS, it is the intention of the citizens of this sovereign state that such a policy be continued."

(La. Acts 1960, p. 1200.)

[4] Even if Louisiana's government had *no responsibility at all* for the "low-caste" status of Negroes in Louisiana life, this law which encourages voters to make decisions on a racial basis effectively operates to maintain the Negro's disadvantaged position by encouraging racism in the voting booth.

is Negroes who have been denied access to the polls in Louisiana, first by the white primary,[5] and now by more sophisticated means.[6] Numerous state laws still command segregation of Negroes in public facilities[7] in the teeth of

---

[5] See, *State ex rel. Trosclair* v. *Parish Democratic Committee*, 120 La. 620, 622, 45 So. 526 (1908):

"It is conceded that none but a 'white Democrat is entitled to become a candidate for a Democratic nomination in this State, under the rules adopted by the Party Central Committee, pursuant to Section 9 of Act No. 49, p. 69 of 1906.'"

See also, Woodward, *The Strange Career of Jim Crow* 68 (1963): "The effectiveness of disenfranchisement is suggested by a comparison of the number of registered Negro voters in Louisiana in 1896, when there were 130,334, and in 1904, when there were 1,342. Between the two dates the literacy, property, and poll-tax qualifications were adopted. In 1896 Negro registrants were in a majority in twenty-six parishes—by 1900 in none."

[6] See, e.g., *United States* v. *Manning*, 205 F. Supp. 172 (W. D. La. 1962); *United States* v. *Deal*, —— F. Supp. ——, 6 Race Rel. L. Rep. 474 (W. D. La. 1961); *United States* v. *The Association of Citizens Councils of Louisiana, et al.*, 196 F. Supp. 908 (W. D. La. 1961); *United States* v. *McElveen*, 180 F. Supp. 10 (E. D. La. 1960).

Although non-whites comprised 28.5 percent of the population of Louisiana they account for only 13.8 percent of the registered voters. U. S. Commission on Civil Rights, Report on Voting 107 (1961).

[7] La. R. S. 40:244 (birth certificates); La. R. S. 33:5066-5068 (housing); La. R. S. 33:4558.1 (parks, playgrounds, swimming pools, etc.); La. R. S. 4:5 (circus entrance); La. R. S. 4:452 (seating at entertainments and athletic contests); La. R. S. 4:451 (social functions); La. R. S. 23:971-975 (eating and sanitary facilities in businesses); La. R. S. 9:201 (anti-miscegenation); La. R. S. 13:917, 13:1219 (divorce proceedings); La. R. S. 17:10-12 (institutions for blind and deaf); La. R. S. 46:181 (homes for the aged and infirm); La. R. S. 15:752, 15:854 (prisons); La. R. S. 40:246 (death certificates); La. R. S. 23:972 (separate utensils and eating facilities for employees in businesses); La. R. S. 15:422(6) (Louisiana criminal courts take judicial notice of extra-legal racial customs); La. R. S 17:443, 17:462, 17:493, 17:523 (State employees enjoined from advocating integration under penalty of losing jobs); La. Const., 1921, Art. X, as amended 1960, §5.1 (State segregates all facilities).

this Court's rulings that segregated public facilities can never be equal for the minority group. Louisiana makes it actionable to call a white man a Negro, no matter how innocent the defendant's mistake or how slight the plaintiff's apparent injury; the premise of Negro inferiority shines clearly in this jurisprudence. *Upton* v. *Times Democrat*, 104 La. 141, 28 So. 970 (1900); *May* v. *Shreveport Traction Co.*, 127 La. 420, 53 So. 671 (1910). That Louisiana's political power and high offices, forming a regime notorious for its history of massive resistance to desegregation,[8] lies in the hands of white men alone is a fact which the Court can notice.[9] Louisiana's reports, too, are filled with proof that both the Courts and litigants regard race as "a matter of supreme importance to those who are involved." *State ex rel. Rodi* v. *City of New Orleans*, 94 So. 2d 108, 116 (La. App. 1957). It was said by a Louisiana court in the last mentioned case, which is but one of many where courts were called on to decide whether race was correctly stated in birth or death records,[10] that:

> We feel that nothing can possibly be of more importance than for a person to be absolutely certain as to his genealogy and particularly as to his race; we know that a white person has an absolute right to be known as white and a colored person has the same right to be known as colored, and we know that in

[8] See Wollett, Race Relations, 21 La. L. Rev. 85, 86 (1960).

[9] La. R. S. §15-422(6) (1950) allows Louisiana's courts to take judicial notice of "the political, social and racial conditions prevailing in this State."

[10] E.g., *Sunseri* v. *Cassagne*, 191 La. 209, 185 So. 1 (1938); *Villa* v. *Lacoste*, 35 So. 2d 419 (1948); *State ex rel. Treadway* v. *Louisiana State Board of Health*, 56 So. 2d 249 (La. App. 1952), aff'd 61 So. 2d 735 (1958); *Green* v. *City of New Orleans*, 88 So. 2d 76 (La. App. 1956); *State of Louisiana ex rel. Dupas* v. *City of New Orleans, et al.*, 125 So. 2d 375 (La. App. 1958).

this area nothing can cause greater distress and humiliation to those who believe themselves to be of one race and then to find that they have in their veins the blood of another. *Id.* at 116-17.

It is of course a part of the mystique of racism to define Negroes as those with "any appreciable mixture" of Negro "blood." [11] "A small proportion of Negro 'blood' puts one in the inferior race for segregation purposes; this is the way in which one deals with a taint, such as a carcinogene in cranberries." [12] It is extremely difficult to "qualify" as a white man in Louisiana.

In the circumstances of life in Louisiana, it is vacuous to assert that the racial designation operates equally with respect to all races because all races must be designated on the ballot. To be designated on the ballot by the state as a Negro is to be designated as a legally inferior citizen, one deemed unfit to participate equally in the affairs of the community. To be designated as white is to be grouped with the dominant majority.

Beyond all this, the simple mathematics of population and voter registration remain as an obstacle to the asser-

---

[11] Neither the statute challenged in this case nor any other Louisiana statute defines the term "Negro" or any similar term. In *Lee* v. *New Orleans G. N. R.R.*, 125 La. 236, 51 So. 182 (1910), the Supreme Court of Louisiana defined the word "colored" as "a term specifically applied in the United States to negroes or persons having an admixture of Negro blood, the same word is often applied to black people, Africans, or their descents, mixed or unmixed, and to persons who have any appreciable mixture of African blood. . . ."

In *State* v. *Treadway*, 126 La. 300, 52 So. 500 (1910), the same term was defined to mean "of some other color than white, having a dark or black color of the skin, specifically in the United States belonging wholly or partially to the African race, having or partaking of the color of the Negro . . . a person having Negro blood in his veins."

[12] Black, "The Lawfulness of the Segregation Decisions", 69 Yale L. J. 421, 426 (1960).

tion that this law treats Negroes equally. Again, assuming, as the Louisiana law at bar assumes, that race does make a difference to voters, racial bloc voting is facilitated by this law and vastly favors white candidates in Louisiana. No parish in Louisiana has a majority of Negro voters. In all but five of the sixty-four parishes, whites constitute more than 70% of the registered voters.[13] Only at the ward or precinct level is there a possibility, perhaps, that there are areas where racial bloc voting could aid a Negro candidate. So the obvious effect of the law is to aid white candidates through white bloc voting in any interracial election contest.

This attempt by Louisiana to codify racism cannot really be regarded as different from that made by Oklahoma, a decade ago, in passing a statute requiring Negroes, and only Negroes, to disclose their race for designation on the ballot. The Tenth Circuit struck down the law because it was blatantly discriminatory against Negroes. *McDonald* v. *Key*, 224 F. 2d 608 (1955), *cert. denied*, 350 U. S. 895. The draftsman of Louisiana's law was more astute, but the Constitution forbids "sophisticated as well as simple-minded modes of discrimination." *Lane* v. *Wilson*, 307 U. S. 268, 275; *Gomillion* v. *Lightfoot*, 364 U. S. 339, 342; *cf. Smith* v. *Texas*, 311 U. S. 128, 132.

In summary, Louisiana's statute operates with unequal effect against the Negro. It is invalid because the State has no more right to encourage voters to discriminate by race, or to act to insure that they will, than it has to require voters to discriminate racially. This statute is also defective because it ignores the fundamental assumption of the Fourteenth Amendment. Racial distinctions are invalid "simply because our Constitution presupposes that men are

---

[13] U. S. Commission on Civil Rights, Report on Voting 266-69 (1961).

created equal, and that therefore racial differences cannot provide a valid basis for governmental action." *School District of Abington Township* v. *Schempp*, 374 U. S. 203, 317 (Stewart, *J.*, dissenting). "[T]he Fourteenth Amendment requires that race not be treated as a relevant factor" *Ibid.* Repudiating these fundamental principles, the State of Louisiana is, by its racial ballot law, enforcing an official policy, however inexplicit, that differences in race justify differences in treatment.

II.

Louisiana's Statute Requiring Each Candidate to Disclose His Race for Publication on the Ballot Constitutes a Denial of Liberty Without Due Process of Law.

Louisiana's statute also deprives the individual of his liberty without due process of law. It deprives him of the opportunity to seek public office without identifying with an ethnic group and disclosing that identity for official publication. The plaintiffs choose to run for office as men rather than as Negroes and to have the publication of their racial background, and indeed of any other facts, left to normal campaign channels, but this liberty the State denies by taking the matter into its own hands.

If any bona fide public purpose were served by the operation of this statute the Court would be faced with a difficult issue such as those posed in *Talley* v. *California*, 360 U. S. 928; *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449; and *Gibson* v. *Florida Investigation Committee*, 360 U. S. 919, where the governmental object to be served by compulsory disclosure had to be weighed against the individual's constitutional rights. Here, the statute serves no legitimate governmental object.

Balanced against the state's utter absence of a valid governmental purpose is a serious invasion of the individual's right to campaign for office on his own ground. The court below refused to recognize any claim to the right of privacy in this case, declaring that it was "not disposed to create a shield against the brightest light of public examination of candidates for public office." This misstates the issue, for the question is not whether the court should create a shield, but whether the state can shine the light.

Voters often judge candidates by strange criteria. Race is important in Louisiana. Health, religion, nationality, age, and sex are other factors that can influence a voter's decision. In some circumstances such factors could conceivably relate rationally to a man's conduct in the office he seeks. Often such factors are seized upon unthinkingly. None could deny the individual voter's right to give them whatever importance he chooses.

It is equally clear that each person who seeks public office has the right to advertise his virtues and try to minimize his deficiencies. In his attempt to persuade the electorate, the candidate must carefully select those items of information that he believes to be most helpful to his cause and give them the broadest publication. If his opponent plays up the candidate's weaknesses, there can be no complaint. But the government has no business trying to influence the electorate. When the state disseminates campaign information it intrudes into an area where it can do incalculable harm. Here, the State of Louisiana is disseminating information on each candidate's race while the voter is recording his decision. In order to do so the state forces the candidate to provide it with the needed information. Compulsory disclosure destroys the candidate's freedom to conduct his own campaign; due process requires that some legitimate governmental end be served. *Bolling* v. *Sharpe*, 347 U. S. 497.

CONCLUSION

For the foregoing reasons, appellants respectfully submit that the judgment below should be reversed.

Respectfully submitted,

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York 19, New York

JOHNNIE A. JONES
530 South 13th Street
Baton Rouge 2, Louisiana

MURPHY W. BELL
BRUCE A. BELL
LEONARD P. AVERY
SAMUEL DICKENS
WILMON L. RICHARDSON
Baton Rouge, Louisiana

Attorneys for Appellants

MICHAEL MELTSNER
NORMAN C. AMAKER
FRANK H. HEFFRON
Of Counsel

INDEX

CITATIONS

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON ET AL., APPELLANTS

v.

WADE O. MARTIN, JR.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINION BELOW

The opinion of the United States District Court for the Eastern District of Louisiana (R. 26–36) is reported at 206 F. Supp. 700.

JURISDICTION

The order denying the prayer for a permanent injunction is dated September 28, 1962 (R. 44). Notice of Appeal was filed October 25, 1962 (R. 48), and probable jurisdiction noted on February 18, 1963 (R. 50). Jurisdiction of this Court to review this decision on direct appeal rests on 28 U.S.C. 1253.

QUESTION PRESENTED

Whether Title 18, § 1174.1 of the Louisiana Revised Statutes, which provides that the official ballots in any

primary, general and special election shall state the race of each candidate, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.[1]

STATUTE INVOLVED

Section 1174.1 of Title 18 of the Louisiana Revised Statutes of 1950 (Act No. 538 of the 1960 Louisiana Legislature) provides as follows:

> A. Every application for or notification or declaration of candidacy, and every certificate of nomination and every nomination paper filed in any state or local primary, general or special election for any elective office in this state shall show for each candidate named therein, whether such candidate is of the Caucasian race, the Negro race or other specified race.
>
> B. Chairman of party committees, party executive committees, presidents of boards of supervisors of election or any person or persons required by law to certify to the Secretary of State the names of candidates to be placed on the ballots shall cause to be shown in such certification whether each candidate named therein is of the Caucasian race, Negro race or other specified race, which information shall be obtained from the applications for or notifications or declarations of candidacy or from the certificates of nomination or nomination papers, as the case may be.

[1] The United States takes no position on either of the appellants' other contentions: (1) that the statute violates the Fifteenth Amendment, and (2) that the statute violates the First Amendment as it has been made applicable to the States by the Fourteenth Amendment.

C. On the ballots to be used in any state or local primary, general or special election the Secretary of State shall cause to be printed within parentheses ( ) beside the name of each candidate, the race of the candidate, whether Caucasian, Negro, or other specified race, which information shall be obtained from the documents described in Sub-section A or B of this Section. The racial designation on the ballots shall be in print of the same size as the print in the names of the candidates on the ballots.

STATEMENT

Appellants Dupuy H. Anderson and Acie J. Belton are citizens of the United States and of East Baton Rouge Parish, Louisiana. They are Negroes. Each sought election to the School Board of East Baton Rouge Parish in the Democratic Primary Election of July 28, 1962. On June 8, 1962, they filed a complaint in the United States District Court for the Eastern District of Louisiana to enjoin enforcement of Act No. 538 of the 1960 Louisiana Legislature, § 1174.1 of Title 18 of the Louisiana Revised Statutes, which would require appellee, the Secretary of State of Louisiana, to print their race in parentheses beside their names on all ballots to be used in the election (R. 1).

The complaint alleged that the statute violated the First, Fourteenth and Fifteenth Amendments to the United States Constitution, and appellants invoked the court's jurisdiction under sections 1981, 1983 and 1971(a) of Title 42, and sections 1331 and 1343(3) of Title 28 of the United States Code. Appellants

sought an injunction against enforcement of the state statute pursuant to 28 U.S.C. 2281 and also asked for declaratory relief under 28 U.S.C. 2201, 2202, for themselves and on behalf of all Negroes similarly situated. They requested that a three-judge court be convened, as provided in 28 U.S.C. 2284.

On June 11, 1962, a motion for a temporary restraining order was denied by the District Judge with whom the complaint had been filed (R. 15). On June 14, 1962, a three-judge court was designated (R. 17). Argument was heard and the case was submitted to the three-judge court on June 26, 1962 (R. 20).

In its opinion of June 29, 1962, the court, by a two-to-one vote (Circuit Judge Wisdom dissenting), upheld the constitutionality of the statute and denied a temporary injunction. The court held that the Louisiana statute did not violate the Fifteenth Amendment because that Amendment applied only to denial of the right to vote; and that the statute did not violate the Equal Protection Clause of the Fourteenth Amendment because it applied to "all candidates alike" without discrimination.

The Democratic Primary Election took place as scheduled on July 28, 1962. The Louisiana statute was enforced, and the appellants' race was printed beside their names on the ballots. Appellant Anderson was defeated in the July 28 election, and appellant Belton was defeated in the runoff election held on September 1, 1962.

On September 19, 1962, appellants filed a motion for leave to file an amended or supplemental com-

plaint (R. 36). On the same date the motion was denied (R. 43). The amended complaint alleged that the appellants' unsuccessful candidacies were substantially influenced by the enforcement of Act No. 538 and that each of the appellants intended to become candidates in the future (R. 37–42). On September 28, 1962, the court, incorporating the opinion of the three-judge court of June 29, 1962, denied appellants' prayer for a permanent injunction (R. 44). Judge Wisdom again dissented. Notice of appeal was filed on October 25, 1962, and this Court noted probable jurisdiction on February 18, 1963.

INTEREST OF THE UNITED STATES

The United States has a particular interest in the protection of constitutional rights relating to the elective process. In the 1957 and 1960 Civil Rights Acts Congress authorized the Attorney General to institute civil actions to protect voting rights of citizens from discriminatory practices. 42 U.S.C. 1971, as amended. Pursuant to that grant of authority, the United States has filed suit in more than forty counties in five States to enjoin unwarranted distinctions in the right to vote and to prevent threats, intimidation or coercion in connection with the exercise of this right. Legal proceedings have also been instituted by the United States to secure inspection of voting records under 42 U.S.C. 1974b. Finally, the United States has directly attacked the constitutionality of state voter qualification laws in the States of Louisiana and Mississippi.

Nearly all of this activity has been directed at eliminating various forms of state-imposed racial discrimination from the voting process. Such discrimination has generally taken the guise of restrictions upon the rights of Negro citizens to register and to cast a ballot. But other types of state regulation may equally affect the integrity of the elective franchise and may impermissibly inject racial distinctions into the voting process. For the reasons developed in this brief, we believe that this is the necessary consequence of the legislation at issue here.

SUMMARY OF ARGUMENT

The district court held that the appellants were not denied the equal protection of the laws by the Louisiana statute because (1) the races of *all* candidates are designated on the official ballot, and (2) the statute does not produce any "actual discrimination" other than by private individuals "wholly beyond the control of the state." In our view, the statute, by concentrating exclusively on the single factor of the candidate's race, has the necessary consequence of facilitating, encouraging and promoting discrimination by voters against candidates of the Negro race. The equal treatment afforded by the statute is illusory only, since none but a Negro candidate is likely to be injured by the labeling requirement. The State has a heavy burden when it seeks to justify the use of a racial designation. Here, that burden cannot be met, for it cannot be said that a statute which singles out race alone as a fact to be stated on the ballot is genuinely concerned with identifying the candidate or

informing the electorate. It follows that the enforcement of Louisiana's statute denies to candidates of the minority race the equal protection of the State's laws.

ARGUMENT

LOUISIANA'S COMPULSORY RACIAL DESIGNATION OF CANDIDATES ON AN OFFICIAL STATE BALLOT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE UNITED STATES CONSTITUTION BECAUSE IT ENCOURAGES VOTERS TO DISCRIMINATE ON THE BASIS OF RACE

A. THE STATUTE PROMOTES VOTING DISCRIMINATION AGAINST NEGRO CANDIDATES

In the present case, as in *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 463, "[t]he crucial factor is the interplay of governmental and private action." It is clear that an individual Louisiana citizen is free to cast his vote for whomever he likes. His private choice is unfettered by the Fourteenth Amendment, and it may be determined entirely by racial prejudices. On the other hand, it is equally obvious that the State of Louisiana may not affirmatively bar Negro citizens from holding public office merely on account of their race. Such discrimination by the State, based upon a classification which this Court has declared to be "obviously irrelevant and invidious" (*Steele* v. *Louisville & Nashville R. Co.*, 323 U.S. 192, 203), would violate the Equal Protection Clause of the Fourteenth Amendment.

This case falls between the two extremes. The State of Louisiana has not, by this statute, directly

imposed any restraint upon a Negro's candidacy, nor has it, by the *self-executing* force of any statute or regulation, reduced a Negro's chances of election. But the statute indirectly, but nonetheless inevitably, discourages Negro citizens from becoming candidates for public office and reduces the probabilities of a Negro's election by compelling all candidates to advertise their race on the ballot.

The contents and form of the official ballot used in general and primary elections in the State of Louisiana are prescribed by statute. La. Rev. Stat. §§ 18:316, 18:671. Before 1960, when the statute here in question was enacted, primary ballots contained no information concerning any of the candidates other than their names. General election ballots also grouped the candidates according to the political parties which they represented. The effect of the 1960 amendment was to add to the ballot a single item of information—the race of each of the candidates. Consequently, Louisiana's primary ballots now contain only the names of the candidates and each one's race. On general election ballots, candidates are grouped according to party affiliation, and racial designations follow their names.

By attaching *only* a racial label to the otherwise unadorned name of each candidate on the official ballot, the State of Louisiana implies to its voting citizenry that the candidate's race is or should be an important element in the voter's choice. By placing the racial designation upon the very document on which the voter expresses his choice, the State directs the voter's

attention to this single consideration at the most critical moment in the entire electoral process—the instant at which the vote is cast. The inevitable effect of this practice is to encourage individual voter-citizens to cast their ballots along racial lines. Since Negroes constitute a distinct racial minority among Louisiana's voters,[2] they are the ones who are injured if the State's emphasis on race succeeds in encouraging voting on racial lines.

By requiring a racial label on the ballot, Louisiana promotes private racial discrimination by voters in the same manner as a State might promote racial segregation by requiring or supplying signs to designate separate Negro and white facilities in privately owned places of public accommodation. In *United States* v. *City of Jackson*, 318 F. 2d 1 (C.A. 5), it was argued that such signs were merely "a helpful hint" and that they "just assist members of both races in the *voluntary* separation of the races." Quoting from its opinion in *Baldwin* v. *Morgan*, 287 F. 2d 750, the Court of Appeals for the Fifth Circuit stated (318 F. 2d at 8):

> It is simply beyond the constitutional competence of the state to command that any facility *either shall be labeled as* or reserved for the exclusive or preferred use of one rather than the other of the races. * * * [Emphasis added.]

---

[2] The report of the Commission on Civil Rights states that as of December 31, 1960, there were 992,684 registered white voters in Louisiana and 158,765 Negro voters. In East Baton Rouge Parish, where the appellants ran for office, the figures were 66,041 white voters and 10,573 Negroes. U.S. Comm'n on Civil Rights, *The 50 States Report* (1961) 214–215.

The State's involvement is the same in the case of the State's ballot as it is in the case of the State's sign. Each is ineffective unless a private individual supplements it with private discrimination. But in each instance it is the State which has pointed the way.

The "indirect" restraint which this labeling requirement imposes upon a Negro's candidacy is very much like the consequences which this Court observed would follow from "[a] requirement that adherents of particular religious faiths or political parties wear identifying arm-bands." *American Communications Ass'n* v. *Douds*, 339 U.S. 382, 402. Although an arm-band requirement would not directly stifle speech and would, in fact, impart truthful information concerning the wearer's affiliation, repressive consequences would result from the combination of "state power" and "private action." See *National Association for the Advancement of Colored People* v. *Alabama*, 357 U.S. 449, 463; *Bates* v. *Little Rock*, 361 U.S. 516, 524. Similarly, the labeling provision of the Louisiana statute, when considered in light of "private attitudes and pressures," *ibid.*, has a clearly coercive effect on the candidacy of Negro citizens for public office.

B. THE STATUTE IS NOT SAVED MERELY BECAUSE ITS TERMS APPLY EQUALLY TO ALL CANDIDATES

The district court observed that pursuant to the statute in question "all candidates must state their race and have it printed on the ballot" (R. 32). On this basis, it concluded that the Louisiana statute was "nondiscriminatory," and distinguished the decision of the Tenth Circuit in *McDonald* v. *Key*, 224 F. 2d 608,

certiorari denied, 350 U.S. 895, which had declared unconstitutional a similar labeling provision applicable only to Negro candidates.

The district court's conclusion was erroneous. The guarantee of the Equal Protection Clause of the Fourteenth Amendment is not limited to *express* statutory classifications. As this Court noted in *Griffin* v. *Illinois*, 351 U.S. 12, 17 n. 11, "a law nondiscriminatory on its face may be grossly discriminatory in its operation." *Griffin* v. *Illinois* and many of this Court's decisions regarding the constitutional rights of indigent defendants in the state courts, culminating with *Douglas* v. *California*, 372 U.S. 353, decided last Term, attest to the proposition that the constitutionality of state action under the Equal Protection Clause must be measured by the necessary effect of the State's conduct, and not merely by the language of its law.

In the present case, the equal treatment which the Louisiana statute affords to Negro and Caucasian candidates is illusory only. Obviously, the racial percentages of Louisiana's voting population being what they now are,[3] Caucasian candidates have little to lose if their race is displayed on the official ballot. Negro candidates, on the other hand, are likely to encounter discrimination. Hence, as in *Goss* v. *Board of Education*, 373 U.S. 683, 688, "[t]he alleged equality [is] * * * only superficial." The full extent of the statute's "nondiscriminatory" nature is that Louisiana law now equally compels both Negro and white candidates to suffer at the polls from racial prejudice.

[3] See note 2, p. 9, *supra*.

C. THE STATUTE IS NOT A LEGITIMATE MEANS OF IDENTIFYING CANDIDATES OR OF INFORMING VOTERS

We may assume, for purposes of argument, that if Louisiana could demonstrate a legitimate interest in displaying *only* the race of each of its candidates for public office next to the candidate's name on the official ballot, such a showing might save Act No. 538. See, *e.g.*, *Bates* v. *Little Rock*, *supra*, at 524. However, the burden of justifying a racial designation is a heavy one. And when, as here, the integrity of the electoral process is involved, the burden should be heavier still. We submit that there is no compelling interest to warrant the racial designation required by Louisiana.

There is no substance to the argument that the State was concerned with further identifying the names on the ballot so as to enable voters to relate the names with actual living persons whom they have seen or heard during an election campaign. Although physical description may be one means of making such an identification, the bare racial label is surely inadequate for this purpose. At best, it is a group identification which serves only to classify the person so described as the "white" or "Negro" candidate—precisely the "invidious" distinction which the State may not promote. See p. 7, *supra*.

In some States identifying information other than the names of the candidates appears on the ballot;* Louisiana is the only State which uses a racial label.

* *E.g.*, Gen. Stat. Kansas 1949 (1961 Supp.) § 25-602 (residence); Rev. Stat. Maine 1954, C. 5, § 5 (residence); Ann. Code Maryland, 1957, Art. 33, § 94 (residence); Ann. Laws

Data concerning a candidate's address, his occupation, or the fact of his incumbency is far more helpful in making a specific identification than is a racial designation. Since most candidates are white, the "Caucasian" label has almost no significance whatever. If, as was true here, more than one Negro candidate runs for office, the "Negro" label merely narrows the field. And if physical description is deemed most appropriate, there are surely many more specific physical characteristics which contribute to *individual* identification than the candidate's race. At best, Louisiana might use race as one of several identifying features. Its isolation on the official ballot is susceptible of only one interpretation—a design to encourage voting along racial lines—and cannot be justified by the minimal assistance it lends to the identification of the candidates.

Equally without merit is any claim that the State is interested in informing the electorate of the personal traits of each candidate, so that the voters might have these considerations in mind when they decide whom to select. The bare racial label on the official ballot cannot serve this purpose. It imparts only the sort of information which invites "invidious" discrimination. See p. 7, *supra*. Standing alone, as it does on the Louisiana ballot, it is of no other significant informational value, as it perhaps might be in the context of a detailed biography of the candidate.

Massachusetts (1962 Supp.) C. 54, § 41 (residence and incumbency); New Hampshire Rev. Stat. Ann., 1955, § 59:3 (residence); Vermont Stat. Ann., 1959, Title 17, § 792(b) (residence); West Virginia Code, 1961, § 97 (residence).

Moreover, if Louisiana's purpose were to convey biographical information to its voters so as to enable them to make an educated choice, it could accomplish this objective far more effectively by distributing such a biography well in advance of the actual vote. The damaging effect of the racial label on the ballot is substantially greater than its minimal contribution to the public's last-minute knowledge of the candidates.

CONCLUSION

Wherefore, it is respectfully submitted that the judgment of the district court should be reversed.

ARCHIBALD COX,
Solicitor General.

BURKE MARSHALL,
Assistant Attorney General.

HAROLD H. GREENE,
EDGAR N. BROWN,
Attorneys.

SEPTEMBER 1963.

U. S. GOVERNMENT PRINTING OFFICE: 1963

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON, ET AL,
Appellants,

v.

WADE O. MARTIN, JR.,
Appellee.

Appeal From the United States District Court for the Eastern District of Louisiana

REPLY BRIEF OF APPELLEE

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

CARROLL BUCK,
First Assistant Attorney General.

HARRY FULLER,
Second Assistant Attorney General.

TEDDY W. AIRHART, JR.
Assistant Attorney General.

THOMAS W. McFERRIN,
Special Counsel.

State Capitol Building
Baton Rouge, Louisiana
Attorneys for Appellee

INDEX

CITATIONS

In the
Supreme Court of the United States

OCTOBER TERM, 1963

No. 51

DUPUY H. ANDERSON, ET AL,

Appellants,

v.

WADE O. MARTIN, JR.,

Appellee.

Appeal From the United States District Court for the Eastern District of Louisiana

REPLY BRIEF OF APPELLEE

STATEMENT

The Complainants, Dupuy H. Anderson and Acie J. Belton, filed the complaint on June 8, 1962 against Wade O. Martin, Jr., Secretary of State of the State of Louisiana, in the United States District Court for the Eastern District of Louisiana, Baton Rouge Division, Civil Action No. 2623. They allege that they are members of the negro race; that Wade O. Martin, Jr., Secretary of State, is expressly charged with the enforcement of Act 538 of the legislature of Louisiana of 1960 (R.S. 18:1174.1); and that the act violates the rights, privileges and immunities of complainants as guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States

secured by Title 42, United States Code, Sections 1971(A) and 1981 to seek and obtain public offices free from state imposed racial distinctions and discriminations and to vote free from abridgements, denials and distinctions imposed by the State.

A majority of a three-judge court on June 29, 1962 decided that the above statute is not in violation of the Fourteenth Amendment and the request for preliminary injunction was denied *(Anderson v. Martin D.C. 1962*, 206 F Supp. 700). The Supreme Court of the United States noted probable jurisdiction and placed the case on the Summary Calendar on February 18, 1963 *(Dupuy H. Anderson et al Appellant, v. Wade O. Martin, Jr.*, No. 634 Supreme Court of the United States, October Term 1962).

The elections referred to in the complaints have long since been held and those officers who have been elected are still serving. The attention of the Court is invited to the fact that the machinery for the primary elections for the State of Louisiana are presently in process. The first primary will be held on December 7, 1963. The second primary will be held on January 11, 1964. (See Appendix of this brief). The Court is respectfully requested to delay its decision in this matter, should the judgment be reversed, otherwise the elections could not be held, as there is not sufficient time to afford a change of ballots and election machinery.

ARGUMENT

Act 538 of 1960 requires that every candidate designate on his application, and that the form of

ballots in primary and general elections, shall show whether the candidate is of the Caucasian race, the Negro race, or other specified race. The sole question is whether the constitutional rights of a negro candidate are abridged when his race, like that of all other candidates, is disclosed on his application, and on the ballot pursuant to State Statute.

Although the complainants allege that the act contravenes their rights under the First, Fourteenth and Fifteenth Amendments of the Constitution, it is difficult to determine precisely which Constitutional Amendment they rely upon. It is obvious that the First Amendment, which in part, refers to abridging the freedom of speech, has no application, and likewise the Fifteenth Amendment has no application because there is nothing in the act which remotely denies or abridges the rights of complainants to vote. There is then left only the Equal Protection and Due Process clauses of the Fourteenth Amendment for consideration.

The courts have never held that a candidate for public office had a right to anonymity. *McDonald v. Key*, 10 Cir. 224 F. 2d 608, held that a requirement of an Oklahoma Statute, that only negroes have their race designated on the ballot violated the Fourteenth Amendment. Specifically, the statute required that any candidate, who is other than the white race, shall have his race designated upon the ballots in parenthesis after his name. Since under the Oklahoma Constitution, the "white race" includes not only members of that race, but members of all other races, except the

negro race, the court held that this resulted in a denial of *equality of treatment* with respect to negroes who run for office. The Louisiana Act (Act 538 of 1960) requires not only the negro to have his race disclosed on the ballot, but it requires the same of the Caucasian, the Mongolian, and any other race. The act therefore specifically requires equality of treatment of all races, including the negro race, and hence, *McDonald v. Key* is no authority for the contentions made by complainants. The dissenting Judge in *Anderson v. Martin* adopted the view that in the Oklahoma case the omission of any racial designation on the ballot amounted to the candidate identifying himself as a white man just as surely as a negro candidate would identify himself by the word "negro" after his name. The court did not so hold in *McDonald v. Key*, and the majority of the court in the present case, did not so hold. It is unrealistic to hold that a state cannot afford a voter an opportunity to see at first glance on a ballot, the race of a candidate, without having to do so through various other means. The Courts have held that anonymity was a right where identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance. *NAACP v. Alabama* 357 U.S. 449; *Bates v. Little Rock*, 361 U.S. 516; *Talley v. California*, 362 U.S. 60.

Freedom of speech or association could not possibly be involved in connection with the designation of race on a ballot. In fact, such a designation, should have the effect of encouraging freedom of speech and assembly.

It is said in the dissenting opinion in the present case, that the vice in Act 538 of 1960 is not dependent on injury to negroes, but in the State's placing its power and prestige behind a policy of racial classification inconsistent with the elective processes. The act in no way involves any "dignity of citizenship", because all races are treated alike. Certainly the court would not hold that any statute which uses the word "negro" as well as a person of the Caucasian race, without further distinction, would involve any "dignity of citizenship". If this is true, then a negro as such could not petition a court for relief where "negroes" have been systematically excluded from jury service; to seek relief in the numerous segregation cases, and in numerous instances where the mere use of this word "negro" has not been barred. The cases involving segregation of schools, publicly operated facilities, and the like, have nothing whatever to do with Act 538 of 1960, which is merely an identification statute. A voter should not be required to be "color blind" when it comes to voting for a candidate, because it is his right to vote for whom he pleases, regardless of race or color. The Louisiana law does not *classify* negroes or white people, they are already classified as such.

It would be completely hypocritical and unrealistic for the Supreme Court of the United States, today to say that the Court did not know and does not still know, that there were at least two races in the United States, namely, the Caucasian and the Negro races. (See Dred Scott decision 60 U.S. 393; *Plessy v. Ferguson*, 163 U.S. 537). Every petition in which negroes

have claimed discrimination with relation to criminal action, voting privileges or school integrations have been labelled petitions by negroes, or through class actions or otherwise.

It was well known that the Chief Justice of this Court, when the Senate considered his nomination, was a white man. This is true of every other Justice of the Supreme Court. It goes without saying that the Senate of the United States was entitled to know whether the Chief Justice and the Associate Justices were of the Caucasian or Negro races when their names were submitted for confirmation. The same is true when the name of Thurgood Marshall was submitted for confirmation by the Senate as a Judge of the United States Court of Appeal of the Second Circuit. It cannot be said that Chief Justice Warren, the Associate Justices, or Justice Thurgood Marshall were confirmed simply because they were white people, or negro people, but at least the Senate knew whether they were of the Caucasian or Negro race. It should also be noted, at this point, that the entire set of military records for individuals have appropriate places for the designation of the serviceman's race. Strength charts and other personnel data are computed and include racial categories, and, will continue to be so computed as long as the military forces exist. This is done to identify the serviceman to his supervisors and interested parties, which is exactly what the state is doing in the instant case.

If this Court should decide that in voting for a candidate, the public is not entitled to know whether

the candidate is of the Caucasian or the Negro race, then the decree of the court necessarily means that by labeling a candidate as a negro, this is, per se, the casting of a reflection upon the negro race. In all of the decisions of this court dealing with discrimination of the races, there has never been a decision in which this court has held that it is a stigma, or an unwholesome thing, that a person happens to be a negro. In short, as above pointed out, it is a well known fact that the Court and no one else up to this time, has in any way refused to recognize that a person is in fact either a Caucasian or a Negro, if true. If the Court should find illegal, a requirement that on a ballot the name of the candidate could not be designated as of the Caucasian or Negro race, in that event, the Court must necessarily be of the opinion that it is a stigma to so designate a negro as hereinabove set forth. All of the negroes and all of the white people have a perfect right to know for whom they are voting. All of the white people may choose to vote for a negro, and all of the negroes may choose to vote for a white person, or all of one race may choose to vote for its particular race. The best way for the people to know how to express their choice in any of the eventualities would be for them to see at first hand on the ballot, whom they wish to vote for. It would not do to say that they should be compelled to ascertain these facts by happenstance, accident or otherwise, because like the Senate of the United States, who confirmed the Judges of this Court, they were entitled to know, first hand, the person, his race, his party, or any other facts which would entitle

them to cast a vote of their own choice. The concealing on the ballot, the race of a person can be little different from the concealing of the correct name of the candidate. Certainly, the Supreme Court has no right, under the Constitution, to deprive any voter of any state to a free exercise of choice among candidates, and to deprive such a voter of a right to see the names and the race of a candidate, would be requiring him to vote in the dark, deprive him of the right of exercise of a free choice in voting. In modern concepts, it may well be that in certain segments of the United States, the designation of the race of a man such as Negro might enure to his benefit, and in other segments, the designation of the Caucasian race might enure to the benefit of that race. In either event, the electorate would not be deceived or fooled, and the result of the election would assuredly be the expression of the free will of the people unhindered by any deceptive practices. The Court cannot afford to say that it would be shameful or discriminatory for a candidate to say that he is a Caucasian or to say that he is a Negro, because the Court in too many recent cases, has held that the Constitution as presently interpreted, forbids discrimination between the races. It is inconceivable that the numerous cases which have reached the Supreme Court, would ever have been considered by the Court, unless there were negroes involved in the case. This is particularly true since the Supreme Court nullified *Plessy v. Ferguson*. And now for the Court to take a reverse position, and hold in effect that it is discrimination for a negro to be known as a negro, as a candidate, is simply inconceivable.

In the cases which involved the selection of grand and petit juries in criminal cases, negroes complaining of discrimination have been permitted to prove that they were negroes, and to prove facts to show whether negroes were systematically excluded from jury service. If the law of any state should provide that opposite the name of all persons called for prospective jury service, the race must be designated applicable to all races alike, then certainly if a Negro or a person of the Caucasian race would be entitled to the information without such a designation, no person would have any right to complain if the race is designated in advance opposite the name of any prospective juror. The designation of race for jury service should not be of less importance than the designation of race for voting purposes. As above pointed out, discrimination is not involved, but simply identification.

Louisiana's statute providing for racial designation of candidates on the ballot, most certainly does not deny a "negro" the equal protection of the laws. No matter how much the issue in this case is clouded by irrevelant phrases, there is nothing contained in the statute but pure equality of treatment. If a "negro" is denied an equal opportunity to be elected to a public office in the State of Louisiana, it is purely the result of an unequal number of "Negro" votes cast for him as compared to the number of "Caucasian" race for the same office. The foregoing is predicated upon the assumption that the individual voters will vote simply and purely according to racial lines, which is the main theme of appellant's argu-

ment. It is completely unreal to say that the State must assure a candidate the equal protection of the law here, for the simple reason that the law is not involved. What is involved, is the elector's right to discriminate, and most certainly he is not compelled to give any form of equality of treatment, as he may vote for or against a candidate because he likes or dislikes his name, the way he smiles, the color of his eyes, or, if he so desires, he may pull a certain lever of the voting machine because of its easy access, and his choice of a candidate could be for many, many, reasons, which the voter is not called upon to explain because his ballot is secret. The ballot of the voter, thus being secret, his right to discriminate for any reason is protected.

If, as Appellants assume, voting will be done by racial lines alone, only an equal number of "negro" voters in the State of Louisiana will assure him an equality of treatment, or as he phrases it, "equal protection of the laws."

There is just as much justification for the placing of a candidate's race on the ballot as there is the placing of his name on the same ballot. The State has a duty to identify the candidate to the elector, and the degree to which it accomplishes this end is entirely constitutional as long as all are treated alike. The governmental purpose is an informed electorate, and an informed electorate will discriminate. If this were not so, an election should not be held, for the holding of an election is an opportunity for the elector

to discriminate, to which he is most certainly entitled. By voting for the candidate of his choice, he necessarily votes or discriminates against the remaining ones.

Providing an informed elector is a valid governmental function, and he then becomes a discriminating elector which is the sole reason for conducting, any election held in accordance with established electoral procedures.

CONCLUSION

For the above reasons, the judgment of the lower court should be affirmed.

If for any reason this Court should reverse the decision of the lower three-judge court, the effect on the present election now in process could be problematical, or at least most disturbing and confusing. By September 14, 1963, all candidates for Governor, and most other state officers, as well as the numerous local candidates in the State will have reached the deadline for qualifying in the primaries in the State. They will have complied with Act 538 of 1960, requiring designation of race, and will doubtless have actively begun campaigning for the first primary election to be held on December 7, 1963. The damage which would be caused by an immediate decision might prove insurmountable. It is suggested to the Court that in the event such a decision is rendered, overruling the lower court, that a time of effectiveness be reached at least beyond the time fixed for the present election. (See Appendix) It is noted in the

school segregation cases, that the Court recognized existing obstacles toward immediate complete integration, and instead required integration only with "deliberate speed". (*Brown v. Board of Education of Topeka, Kansas et al*, 349 U.S. 294.)

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

CARROLL BUCK,
First Assistant Attorney General.

HARRY FULLER,
Second Assistant Attorney General.

TEDDY W. AIRHART, JR.
Assistant Attorney General.

THOMAS W. McFERRIN,
Special Counsel.

State Capitol Building
Baton Rouge, Louisiana
Attorneys for Appellee

CERTIFICATE

I, Jack P. F. Gremillion, a member of the Bar of The United States Supreme Court, hereby certify that the _____ day of September, 1963, a copy of the above and foregoing brief was served on Jack Greenberg, James M. Nabrit, III, 10 Columbus Circle, New York 19, New York, Johnnie A. Jones, 530 South 13th Street, Baton Rouge, Louisiana, Archibald Cox, Burke Marshall, Harold H. Greene, Edgar N. Brown, Department of Justice, Washington, D.C., 20530, by depositing same in the United States mail, postage prepaid.

_____

Of Counsel

APPENDIX I

Election Schedule—Showing Procedure of Secretary of State's office in primary and general election, beginning September 7, 1963 and ending April 1964, as required by Louisiana election laws.

September 7	State Central Committee meets
September 14	Deadline for state candidates to qualify
September 16	Receive certification of state candidates from Mr. Riddle; Mr. Martin numbers state candidates; submit copy on work ballot to printer
September 18	Submit partial copy for absentee and machine ballots to printer
September 25	Mr. Martin issues news release setting deadline for candidates to withdraw (October 7)
October 7, noon	Deadline for candidates to withdraw
October 8	Begin actual printing of absentees
October 25	Complete printing and shipping of absentees
October 21	Begin printing samples and machine ballots
November 1	Complete printing of samples and all machine ballots
November 5	Publish Cards of Instruction in State Times
November 6	Complete printing of all supplies
November 10	Fill all requests and routine mailing for sample ballots

November 15-30	Prepare tabulation sheets for primary election; print Municipal Election Information booklet
December 7	FIRST PRIMARY
December 8	Begin tabulation
December 12	Tabulation should be complete by late afternoon
December 14	Promulgation in State Times
December 16	Begin printing absentees for second primary
December 21	Complete printing of absentees
December 23	Start printing machine ballots and supplies
January 2	Complete printing machine ballots and supplies
January-1st wk.	Preparation of tabulation sheets for second primary; mail approximately 600 municipal election information booklets
January 11	SECOND PRIMARY
January 12	Begin tabulation of second primary
January 15	Print memo ticket for general election
January 17	Promulgate in State Times
January 20	Submit copy for absentees and machine ballots and supplies for general election; begin typing approximately 4,000 commissions, cardex cards, ID cards, labels and posting book (See memo re date for commissions)
January 31	Complete printing of absentees for general election

February 3	Begin printing machine ballots and supplies for general election
February 14	Complete ballots and supplies for general election
February 20	Begin printing absentees for approximately 75 municipal elections
February 20-25	Mail letters of inquiry for Primary Election Information booklet for fall
March 3	GENERAL ELECTION
March 2	Submit copy for Primary Election Information book to Attorney General
March 2	Begin printing machine ballots and supplies for 75 municipal elections
March 6	Begin proclamations for general election
March 13	First day to issue proclamations for general election